

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

4 IN RE:

5 BLUE CROSS BLUE SHIELD 2:13-20000-RDP
6 ANTITRUST LITIGATION, NOVEMBER 19, 2015
7 MDL 2406. BIRMINGHAM, ALABAMA

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9 TRANSCRIPT OF MONTHLY DISCOVERY/STATUS CONFERENCE
10 BEFORE THE HONORABLE T. MICHAEL PUTNAM,
11 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 FOR BLUE CROSS BLUE SHIELD
14 ANTITRUST LITIGATION MDL 2406:
15 ANDREW PHILLIP CAMPBELL, ESQ.
16 CAMPBELL, GUIN, WILLIAMS, GUY AND
17 GIDIERE, LLC
18 BIRMINGHAM, ALABAMA

19
20 SPECIAL MASTER:
21 EDGAR C. GENTLE, III
22 GENTLE, TURNER, SEXTON & HARBISON
23 HOOVER, ALABAMA
24
25

1 APPEARANCES (CONTINUED)

2
3 FOR THE PLAINTIFFS:

4 BARRY RAGSDALE, ESQ.

5 MEGAN JONES, ESQ.

6 CHRIS HELLUMS, ESQ.

7 TUCKER BROWN, ESQ.

8 GREG DAVIS, ESQ.

9 NICK ROTH, ESQ.

10
11 FOR THE DEFENDANTS:

12 KIM WEST, ESQ.

13 J.T. MATESTA, ESQ.

14 CARL BURKHALTER, ESQ.

15 DAN LAYTIN, ESQ.

16 EMILY YINGER, ESQ.

17 TRACY ROMAN, ESQ.

18
19 COURT REPORTER:

20 LINDY M. FULLER, RMR, CRR, CBC

21 FEDERAL OFFICIAL COURT REPORTER

22 BIRMINGHAM, ALABAMA

23

24

25

1 P R O C E E D I N G S

2 (IN OPEN COURT)

3 THE CLERK: PLEASE REMAIN SEATED AND
4 COME TO ORDER.

5 THE COURT: GOOD AFTERNOON. THIS IS IN
6 THE CASE OF, IN RE: BLUE CROSS BLUE SHIELD
7 MULTI-DISTRICT ANTITRUST LITIGATION, MULTI-
8 DISTRICT LITIGATION NUMBER 2406, A NORTHERN
9 DISTRICT OF ALABAMA NUMBER 2:13-20000. AND WE
10 ARE SCHEDULED AT THIS TIME FOR OUR USUAL MONTHLY
11 DISCOVERY CONFERENCE.

12 AND I HAVE PREPARED A LITTLE BIT OF AN
13 AGENDA, AND I AM NOT SURE EXACTLY WHERE THE
14 PARTIES WANT TO GO AS FAR AS DISCUSSIONS, BUT
15 SOME OF THE THINGS THAT I WOULD LIKE TO TAKE UP,
16 FIRST THING I WOULD LIKE TO TAKE UP IS JUST TO
17 GET A REPORT ABOUT THE ONGOING MEET AND CONFER
18 PROCESS.

19 THERE WAS SOME STILL SOME MEETING AND
20 CONFERRING GOING ON ABOUT THE SCOPE OF DOCUMENT
21 PRODUCTION, RELEVANCE OF DOCUMENT PRODUCTION,
22 THINGS OF THAT SORT, AND I WOULD LIKE TO GET SOME
23 INDICATION WHETHER THERE IS PROGRESS BEING MADE
24 ON THAT. MR. RAGSDALE?

25 MR. RAGSDALE: THE EASY ANSWER IS YES,

1 THERE IS PROGRESS BEING MADE.

2 THE COURT: OKAY.

3 MR. RAGSDALE: WE HAVE AND CONTINUE TO
4 MEET SINCE OUR LAST VISIT HERE. IN ADDITION TO
5 THAT, WE ARE WORKING ON SCHEDULING ADDITIONAL
6 MEET AND CONFERS.

7 IN ADDITION, AND I THINK THIS MAY OR
8 MAY NOT BE THE FOCUS OF YOUR QUESTION, BUT WE
9 HAVE SPECIFICALLY ACCELERATED THE MEET AND CONFER
10 PROCESS WITH BLUE CROSS OF ALABAMA, AND THE
11 ASSOCIATION, IN PARTICULAR, IN ORDER AND IN
12 REACTION TO JUDGE PROCTOR'S ORDER.

13 THE COURT: THAT'S ONE OF THE THINGS
14 THAT I WANTED TO HEAR GENERALLY FROM THE PARTIES
15 ABOUT AS WELL IS DO YOU VIEW THE DISCOVERY
16 PROCESS IN SOMEWHAT OF A DIFFERENT LIGHT NOW,
17 CONSIDERING JUDGE PROCTOR'S MOST RECENT ORDER IN
18 THE CASE?

19 MR. RAGSDALE: TO BE HONEST, I THINK
20 EVERYBODY IS STILL DIGESTING EXACTLY ITS IMPACT,
21 AND THAT PROBABLY IS A CONTINUING PROCESS. BUT
22 WE CERTAINLY HAVE VIEWED IT AS AN OPPORTUNITY TO
23 PRIORITIZE SOME OF THE DISCOVERY. AND, REALLY,
24 BY THAT, I MEAN PRIORITIZE THE RESOURCES AND THE
25 FOCUS OF WHAT WE WANT TO TRY TO GET MORE QUICKLY

1 THAN OTHERS.

2 WE DON'T BELIEVE IT MEANS THAT
3 DISCOVERY OUGHT TO SLOW DOWN IN ANY WAY, BUT THE
4 PARTICULAR ASPECTS OF IT CERTAINLY MAY NEED TO BE
5 ACCELERATED, AND WE HAVE BEGUN THOSE DISCUSSIONS,
6 AS I SAID, IN PARTICULAR WITH BLUE CROSS OF
7 ALABAMA.

8 WE HAVE HAD TWO MEET AND CONFERS, AT
9 LEAST, I THINK, IN THE LAST TWO WEEKS; ONE WITH
10 THE ASSOCIATION AND WITH BLUE CROSS OF ALABAMA
11 JOINED BY AND PARTICIPATED IN BY THE OTHER
12 DEFENDANTS AS WELL HERE IN BIRMINGHAM. AND THEN
13 JUST YESTERDAY, WE HAD A LOVELY STAY INSIDE
14 DURING THE RAIN STORM MEETING WITH BLUE CROSS OF
15 ALABAMA IN WHICH I THINK SIGNIFICANT PROGRESS WAS
16 MADE.

17 I WOULD SAY THAT THERE ARE A LOT OF
18 ISSUES STILL TO BE RESOLVED. THAT PROBABLY WON'T
19 SURPRISE THE COURT, BUT I WILL SAY THAT WE HAVE
20 EXPERIENCED A HEIGHTENED DEGREE OF COOPERATION
21 AND AN ABILITY TO GET MOVEMENT, PROGRESS TO BE
22 MADE WITH OF ALABAMA AND THE ASSOCIATION.

23 I THINK YOU ARE GOING TO HEAR WE ARE
24 ALSO WORKING ON AN ADDITIONAL MEET AND CONFER
25 WITH THE ASSOCIATION THE WEEK AFTER THANKSGIVING

1 AS WELL.

2 THE COURT: MS. WEST?

3 MS. WEST: YOUR HONOR, FOR THE
4 ASSOCIATION, MS. SARAH DONNELL, MR. LAYTIN.

5 MR. LAYTIN: THANK YOU, YOUR HONOR.
6 SARAH DONNELL WILL ADDRESS THE COURT WHEN IT
7 COMES TO THE CONFIDENTIALITY MOTION.

8 WE GENERALLY AGREE THAT WE HAVE BEEN
9 HAVING PRODUCTIVE CONVERSATIONS BETWEEN THE
10 PLAINTIFFS' AND THE ASSOCIATION. WE SEE IT AS AN
11 OPPORTUNITY TO START PRODUCING DOCUMENTS WITH
12 EVEN MORE, EVEN MORE EXPEDITED, ACCELERATED
13 SCHEDULE. WE HAVE BEEN MEET AND CONFERRING WITH
14 PLAINTIFFS IN WAYS THAT WE CAN STREAMLINE AND
15 EXPEDITE AND MAKE MORE EFFICIENT THE DISCOVERY
16 PROCESS. IN PARTICULAR, THINGS LIKE EXPEDITED
17 MEET AND CONFER PROCESS REGARDING THE SEARCH
18 METHODOLOGY THAT WE'LL USE, THE APPROPRIATE END
19 DATE FOR DISCOVERY CUT OFF, AND THE APPROPRIATE
20 CUSTODIAN LIST.

21 WE HAVE MET AND CONFERRED WITH THEM ON
22 THE SUBJECTS. WE HAVE BEEN AWAY, GIVEN
23 PLAINTIFFS A COMPREHENSIVE PROPOSAL IN THAT
24 REGARD. WE HAVE BEEN WAITING FOR A RESPONSE. WE
25 ARE HAPPY TO MEET AND CONFER WITH THEM THE WEEK

1 AFTER THANKSGIVING AND WE HAVE A PROPOSAL IN THAT
2 REGARD BECAUSE WE WOULD LIKE TO DO EVERYTHING WE
3 CAN TO MEET THE JANUARY 2017 DATE THAT JUDGE
4 PROCTOR HAS ORDERED, AND WE WILL MEET IT. IN
5 ORDER TO DO THAT THOUGH, WE NEED CLARITY ON
6 THINGS, IN THE EVENT WE ARE NOT ABLE TO REACH AN
7 AGREEMENT.

8 SO, WHAT WE PROPOSE IN THAT REGARD
9 SUBJECT TO, OF COURSE, ANYTHING THAT YOUR HONOR
10 WANTS TO ORDER IS THAT THE NEXT DISCOVERY
11 CONFERENCE IN DECEMBER THAT WE HAVE DECIDED ANY
12 OF THOSE ISSUES RELATING TO SEARCH METHODOLOGY,
13 TIME PERIOD, AND CUSTODIANS, THAT WE WOULD BE
14 HAPPY TO, SAY, DO A DECEMBER 10TH EXCHANGE WITH
15 PLAINTIFFS ON OUR JUST POSITION PAPERS AND TO
16 HAVE THOSE ISSUES DEALT WITH SO THAT WE CAN MOVE
17 FORWARD.

18 THE COURT: MR. RAGSDALE, HAS ANYBODY,
19 THE PLAINTIFF'S SIDE HAVE ANY KIND OF FEELING
20 ABOUT ESTABLISHING A DECEMBER 10TH DEADLINE FOR
21 HAVING -- I HESITATE TO SAY COMPETING PROPOSALS,
22 BUT PROPOSALS FOR THE SEARCH METHODOLOGIES,
23 CUSTODIANS, THINGS OF THAT SORT?

24 MR. LAYTIN: ONE POINT OF
25 CLARIFICATION. I AM SPEAKING NOW ON BEHALF OF

1 THE ASSOCIATION.

2 THE COURT: SURE.

3 MR. RAGSDALE: WE ARE IN FAVOR OF
4 EXPEDITING ANYTHING AND EVERYTHING. AND
5 DEPENDING ON WHEN WE HAVE THAT MEET AND CONFER,
6 WE THINK DECEMBER 10TH IS A REASONABLE
7 OPPORTUNITY TO GET THAT INFORMATION TO YOU. AND
8 WE EMBRACE THE ASSOCIATION'S PROPOSAL REGARDING
9 THAT.

10 THE COURT: OF COURSE, AS MENTIONED
11 ALREADY, THE NEXT DISCOVERY CONFERENCE IS
12 DECEMBER 15TH. SO WHY DON'T WE THEN PLAN TO
13 HAVE, HOPEFULLY, A VERY PRODUCTIVE MEET AND
14 CONFER IN THE FIRST WEEK OF DECEMBER RIGHT AFTER
15 THANKSGIVING? AND THEN DEPENDING ON WHAT'S LEFT
16 OVER IN CONTROVERSY, HAVE TWO PROPOSALS SUBMITTED
17 IN EXCHANGE BETWEEN THE PARTIES, BETWEEN THE
18 ASSOCIATION AND THE PLAINTIFFS, AND PRESENTED TO
19 THE COURT BY DECEMBER 10TH. AND THEN WE'LL SEE
20 WHERE WE ARE WHEN WE CONFER, WHEN WE HAVE OUR
21 CONFERENCE ON THE 15TH THEN.

22 MR. LAYTIN: IT WOULD BE HELPFUL TO GET
23 A PROPOSAL FROM PLAINTIFFS IN ADVANCE OF OUR MEET
24 AND CONFER WHERE WE CAN UNDERSTAND WHAT THE
25 PARTIES' POSITIONS ARE.

1 MR. RAGSDALE: WE DO PLAN ON
2 CELEBRATING THANKSGIVING THIS YEAR.

3 THE COURT: I UNDERSTAND. THANK YOU.
4 ANYTHING ELSE?

5 MR. LAYTIN: NO. THANK YOU, YOUR
6 HONOR.

7 THE COURT: MS. YINGER?

8 MS. YINGER: THANK YOU, YOUR HONOR.
9 EMILY YINGER ON BEHALF OF THE OTHER DEFENDANTS,
10 THE OTHER DEFENDANTS OTHER THAN THE ASSOCIATION
11 AND THE ALABAMA PLAN.

12 WE CONTINUE TO WORK WITH THE PLAINTIFFS
13 ON COMING TO AGREEMENTS ON STRUCTURED DATA AND
14 UNSTRUCTURED DATA. WITH THE PROVIDER PLANS, WE
15 HAVE ACTUALLY REACHED ON BEHALF OF THE HOGAN
16 LEVELS DEFENDANT'S, SUBSTANTIAL AGREEMENT ON
17 STRUCTURED DATA FIELDS THAT WE WILL NOW APPLY TO
18 SPECIFIC CLIENTS DATA SYSTEMS. AND AS WE HAVE
19 REPORTED BEFORE, WE ARE SUBSTANTIALLY AGREED ON
20 THE SCOPE OF 159 UNSTRUCTURED RFPs.

21 WE ALSO ARE INTERESTED IN WHAT THE
22 PLAINTIFFS WOULD LIKE TO PRIORITIZE IN TERMS OF
23 DISCOVERY IN LIGHT OF THE STREAMLINING ORDER AND
24 WE ARE AWAITING THEIR PROPOSAL ON THAT. WE HAVE
25 TALKED TO THEM ABOUT THAT AND THEY HAVE AGREED

1 THEY WILL GIVE US SOMETHING. WE ARE HOPING WE'LL
2 GET SOMETHING RIGHT AT THE BEGINNING OF DECEMBER.
3 SO WE CAN ADJUST RESOURCES AND FOCUS, AS MR.
4 RAGSDALE MENTIONED, IN THE RIGHT DIRECTION.

5 SO, WE ARE MAKING PROGRESS. ONE OF THE
6 THINGS THAT THE PARTIES DISCUSSED, THE RECENT
7 MEET AND CONFER IN BIRMINGHAM WAS AN AGREED UPON,
8 WAS MOVING ONE OF THE DEADLINES IN DISCOVERY
9 ORDER NUMBER ONE. THERE IS A DECEMBER 14TH
10 DEADLINE FOR SUPPLEMENTING WITNESS DISCLOSURES
11 AND WE ALL RECOGNIZE THAT THAT IS SOMETHING THAT
12 NEEDS TO BE ADJUSTED NOW.

13 WE HAVE PROVIDED OUR PROPOSAL TO THE
14 PLAINTIFFS AND THEY ARE LOOKING AT THAT AND HAVE
15 PLEDGED TO GET BACK TO US SOON ON WHAT THOSE NEW
16 DATES SHOULD BE. BUT WE ARE IN AGREEMENT AND,
17 THAT THAT DECEMBER 14TH DATE SHOULD BE MOVED.

18 THE COURT: ALL RIGHT. I AM ASSUMING,
19 BECAUSE THAT COMES UP ON DECEMBER 14TH, THAT TO
20 THE EXTENT THE PARTIES CAN REACH SOME KIND OF
21 AGREEMENT FOR AN EXTENDED DATE ON THAT, THEN I
22 SHOULD BE GETTING THAT THE FIRST WEEK OF
23 DECEMBER, I WOULD THINK.

24 MS. YINGER: I WOULD THINK SO, TOO.

25 DOES THAT WORK?

1 MR. RAGSDALE: YES.

2 MS. YINGER: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU.

4 MS. ROMAN: YOUR HONOR?

5 THE COURT: YES, MA'AM.

6 MS. ROMAN: TRACY ROMAN ON BEHALF OF
7 FIVE OF THE DEFENDANTS WHO MOVE TO DISMISS ON
8 PERSONAL JURISDICTION AND VENUE GROUND IN THE
9 ALABAMA CASES IN CONWAY AND A.M.

10 AND I JUST WANTED TO MENTION TO THE
11 COURT THAT IN OUR PROPOSAL TO THE PLAINTIFFS FOR
12 THE ACCELERATED DISCOVERY PROCESS, WE HAVE ASKED
13 THAT THEY CONSIDER INCLUDING IN THAT ACCELERATED
14 DISCOVERY, DISCOVERY RELATING TO PERSONAL
15 JURISDICTION VENUE IN THE ALABAMA CASES AND THEY
16 ARE LOOKING AT THAT NOW. BUT I DID WANT TO
17 MENTION THAT TO THE COURT. WE WOULD LIKE TO GET
18 THAT DONE. IT SHOULDN'T TAKE LONG. THEY ISSUED
19 THEIR WRITTEN REQUESTS IN THE SUMMER. I THINK
20 MOST OF US RESPONDED IN EARLY AUGUST, SO WE NEED
21 TO JUST MEET AND CONFER AND GET THAT DONE. AND
22 WE THINK A 60-DAY PERIOD WOULD BE REASONABLE BUT
23 WE WOULD LIKE TO GET THAT COMPLETED.

24 THE COURT: IS THERE A PLAN OR SCHEDULE
25 FOR ANOTHER MEET AND CONFER ABOUT THAT ISSUE.

1 MS. ROMAN: THAT IS PART OF THE
2 PROPOSAL THAT MS. YINGER MENTIONED THAT WE SENT
3 OVER TO THE PLAINTIFFS, SO WE ARE WAITING FOR
4 RESPONSE ON THAT.

5 THE COURT: OKAY.

6 MS. ROMAN: BUT I WANTED THE COURT TO
7 BE AWARE OF IT.

8 THE COURT: ALL RIGHT. GOOD. THANK
9 YOU.

10 GIVEN THE STREAMLINING ORDER THAT SORT
11 OF FOCUSES ON BLUE CROSS OF ALABAMA, DOES ANYONE
12 WISH TO SPEAK ABOUT DISCOVERY FOR BLUE CROSS
13 ALABAMA?

14 MR. MATESTA: YES, SIR. YOUR HONOR,
15 J.T. MATESTA. YOUR HONOR, I WILL ECHO MR.
16 RAGSDALE'S COMMENTS THAT WE ARE MAKING
17 TREMENDOUS PROGRESS WITH RESPECT TO THE
18 PLAINTIFFS ON APPROPRIATE DISCOVERY PARAMETERS ON
19 BEHALF OF ALABAMA. WE HAD A FIVE HOUR MEET AND
20 CONFER YESTERDAY WHERE WE MADE A LOT OF PROGRESS.
21 BOTH PARTIES LEFT WITH SPECIFIC ACTION ITEMS.
22 AND I THINK WE HAVE DISCUSSED WE ARE HAVING A
23 STANDING MEETING EVERY TWO WEEKS TO REVISIT THOSE
24 ISSUES.

25 WE HAVE INFORMED THE PLAINTIFFS IT'S

1 OUR EXPECTATION THAT THOSE MEET AND CONFERS WILL
2 BE COMPLETED BY THE END OF THE YEAR SO THAT WE
3 ARE IN A POSITION TO BEGIN DEVELOPING QUERIES IN
4 PARTICULAR FOR OUR STRUCTURED DATA SYSTEMS AND
5 BEGIN TO GET THAT DATA OUT TO THE PLAINTIFFS.

6 THIS WEEK, WE BEGAN OUR UNSTRUCTURED
7 DOCUMENT PRODUCTION FOR THOSE REQUESTS FOR WHICH
8 WE HAVE REACHED AGREEMENT. AND IT'S OUR
9 INTENTION TO CONTINUE TO MAKE A ROLLING
10 PRODUCTION OF THOSE DOCUMENTS FOR THOSE RFPs
11 WHERE WE HAVE AGREEMENT. FROM MY VANTAGE POINT,
12 WE HAVE ABOUT 90 PERCENT OF THE REQUESTS WE HAVE
13 AGREED AS TO THE PROPER SCOPE. WE HAVE STILL GOT
14 A COUPLE OF THRESHOLD ISSUES THAT WE INTEND TO
15 RESOLVE IN THE COMING WEEKS. BUT IT'S OUR
16 EXPECTATION THAT WE'LL PRESENT TO THE COURT BY
17 THE END OF THE YEAR THAT WE HAVE REACHED
18 AGREEMENT OR HERE ARE THE SHORT LIST OF ISSUES
19 THAT WE NEED YOU TO RESOLVE.

20 THE COURT: YOU DON'T ANTICIPATE THAT
21 THAT WILL BE RESOLVED BY THE NEXT CONFERENCE ON
22 DECEMBER 15TH? YOU ARE LOOKING AT END OF THE
23 YEAR SORT OF THING, PERHAPS IT'S OVER INTO
24 JANUARY BEFORE WE HAVE ANY KIND OF CONFERENCE
25 ABOUT IT?

1 MR. MATESTA: I THINK THERE MAY BE ONE
2 OR TWO ISSUES THAT GET PRESENTED AT THE DECEMBER
3 HEARING. WE DISCUSSED OFF LINE YESTERDAY WHETHER
4 OR NOT IT MADE SENSE TO PERHAPS HAVE A SPECIAL
5 SETTING WITH YOUR HONOR TOWARD THE END OF THE
6 YEAR. I THINK WE HAVE GOT A SORT OF MEET IN THE
7 NEXT TWO WEEKS AND SEE WHERE THE STATUS LIES WITH
8 RESPECT TO THE OUTSTANDING MATTERS, AND THEN
9 WE'LL COME BACK TO THE COURT AND ADVISE YOU AS TO
10 WHERE WE THINK WE ARE.

11 THE COURT: ALL RIGHT. ANYONE ELSE
12 WISH TO REPORT JUST GENERALLY ABOUT THE MEET AND
13 CONFER PROCESS, WHAT MAY BE ON THE HORIZON FOR A
14 MEET AND CONFER?

15 AND I GUESS, DOVETAILING INTO THAT, AND
16 I THINK WE HAVE HEARD SOME ALREADY, WHAT SORT OF
17 ISSUES DO PARTIES ANTICIPATE COMING UP FOR THE
18 DECEMBER CONFERENCE?

19 WE ALREADY HAVE THE POSSIBILITY OF
20 COMPETING PLANS FOR BLUE CROSS BLUE SHIELD
21 ASSOCIATION DOCUMENT PRODUCTION DISCOVERY.
22 HOPEFULLY, THAT WILL BE SOMETHING THAT WILL BE
23 READY TO BE DISCUSSED IN DECEMBER. BUT ARE THERE
24 OTHER ISSUES THAT MAY COME UP FOR DISCUSSION IN
25 DECEMBER? MR. RAGSDALE?

1 MR. RAGSDALE: I WOULD SAY INEVITABLY
2 THERE ARE. I MEAN, I AM AN OPTIMIST, BUT I AM
3 NOT THAT MUCH OF AN OPTIMIST.

4 THE COURT: TURKEY IS A GOOD WAY OF
5 REACHING PEACE AMONG PEOPLE.

6 MR. RAGSDALE: I AGREE WITH THAT. AND
7 I THINK THERE IS SOMETHING TO BE SAID FOR THAT.
8 YOU KNOW, THERE WILL BE ISSUES IN THE BIG
9 PICTURE, AND I THINK THE COURT IS AWARE OF THIS.
10 ONE OF THE ISSUES THAT HAS CONFOUNDED US A LITTLE
11 BIT IS THE AMOUNT OF TIME THAT IT WILL TAKE
12 PARTICULAR DEFENDANTS TO PRODUCE SOME OF THE DATA
13 THAT WE NEED TO HAVE PRODUCED. AND WE ARE
14 WORKING, FOR EXAMPLE, WITH BLUE CROSS OF ALABAMA
15 ON THOSE DATE QUESTIONS TO TRY TO GET THEM SOONER
16 RATHER THAN LATER.

17 THE COURT: TALKING ABOUT STRUCTURED
18 DATA --

19 MR. RAGSDALE: YES.

20 THE COURT: -- CLIENT-INSURED
21 PRINTOUTS, THINGS OF THAT SORT, PRINTOUTS OF
22 INSURED ACCOUNTS, INSURED CLAIMS?

23 MR. RAGSDALE: YES. AND THE ISSUE,
24 FRANKLY, IS THAT WE HAVE, BASED ON JUDGE
25 PROCTOR'S ORDER, A SET AMOUNT OF TIME OBVIOUSLY

1 TO GET THE CASE READY FOR TRIAL. WE WOULD PREFER
2 THAT MOST OF THAT TIME NOT BE TAKEN UP ON WAITING
3 FOR THE DEFENDANTS TO PRODUCE THE DATA BUT WE
4 ALSO RECOGNIZE THERE ARE TECHNICAL LIMITATIONS ON
5 THEIR ABILITY, AND WE HAVE DISCUSSED THOSE WITH
6 THEM.

7 BUT WE, AT SOME POINT, ARE GOING TO
8 HAVE TO, I THINK, SET SOME INTERIM DEADLINES. WE
9 ARE NEGOTIATING AND TALKING ABOUT THOSE,
10 CERTAINLY NOT PREPARED TO GIVE THOSE TO YOU
11 TODAY. WE MAY BE IN A POSITION TO AT LEAST
12 DISCUSS THOSE AS PART OF OUR COMPETING PROPOSALS
13 BUT THAT IS AN ISSUE THAT'S ONGOING AND NOT RIPE
14 FOR PRESENTATION TO THE COURT. BUT AT SOME
15 POINT, WE'RE GOING TO HAVE TO CONFRONT THE NOTION
16 OF THE TECHNICAL LIMITATION TIME PERIODS, HOW
17 LONG THAT'S GOING TO TAKE, AND HOW LONG IT'S
18 GOING TO TAKE FOR US ONCE WE GET THAT DATA FOR
19 OUR EXPERTS TO BE PREPARED.

20 THOSE KIND OF ISSUES ARE GOING TO HAVE
21 RAMIFICATIONS UP AND DOWN THROUGH THE SCHEDULE
22 THAT I HOPE WE'LL BE ABLE TO NARROW THOSE WHEN WE
23 PRESENT THEM TO YOU IN DECEMBER.

24 ONE OTHER ISSUE THAT I KNOW IS
25 PRESENTLY BEFORE THE COURT IS THE QUESTION OF

1 30(B)(6) DEPOSITIONS. THAT ISSUE WE CONTINUE TO
2 TALK ABOUT IN ADDITION TO OBVIOUSLY ANTICIPATING
3 THE COURT'S RULING ON THAT, BUT THAT WILL START
4 TO PERCOLATE AFTER THE FIRST OF THE YEAR.

5 THE COURT: ARE THE PLAINTIFFS READY TO
6 START TAKING 30(B)(6) DEPOSITIONS IN CERTAIN
7 AREAS? I RECOGNIZE YOU STILL HAVE DOCUMENT,
8 ROLLING DOCUMENT PRODUCTION COMING TO YOU. BUT
9 ARE THERE AREAS OF INQUIRY WHERE THE PLAINTIFFS
10 ARE READY IN THE NEXT 20 DAYS, 30 DAYS, TO
11 ACTUALLY START TAKING DEPOSITIONS?

12 MR. RAGSDALE: WELL, KEEP IN MIND THERE
13 ARE OBVIOUSLY DEADLINES FOR NOTICE TO GO OUT.

14 THE COURT: SURE; SURE.

15 MR. RAGSDALE: WE HAVE NOT NOTICED
16 THOSE DEPOSITIONS WITH THE EXCEPTION OF THE SOUTH
17 CAROLINA DEPOSITIONS. WE ARE READY TO BEGIN
18 TAKING THOSE AND WE ARE READY TO BE BEING TAKING
19 OTHER 30(B)(6) DEPOSITIONS.

20 THE COURT: OKAY.

21 MR. RAGSDALE: BUT OBVIOUSLY, WE DON'T
22 WANT TO WALK INTO A SITUATION WHERE WE ONLY GET
23 TO TAKE ONE OR WE MAY BE IN A SITUATION WHERE WE
24 DON'T WANT TO FORECLOSE THE POSSIBILITY TO
25 ADDRESS DISCREET TOPICS.

1 SO THE ANSWER IS YES, WE ARE READY,
2 BUT THAT WILL PROBABLY AGAIN COME IN MORE AFTER
3 THE FIRST OF YEAR.

4 THE COURT: JUST AS A, THIS MAY BE
5 JUMPING TO A DIFFERENT SUBJECT. BUT JUST AS A --
6 AND I CERTAINLY DON'T MEAN TO SUGGEST THIS IS
7 NECESSARILY THE COURT'S VIEW OF IT, BUT THINKING
8 ABOUT THE 30(B)(6) DEPOSITIONS, IF WE WERE TO
9 STRUCTURE 30(B)(6) DEPOSITIONS TO SAY, IN EFFECT,
10 ALL RIGHT, PLAINTIFFS, YOU CAN BREAK YOUR
11 30(B)(6) DEPOSITIONS UP INTO THREE SESSIONS
12 WITHOUT LEAVE OF COURT. IF YOU WANT TO TAKE BLUE
13 CROSS OF SHANGRI-LA, THEIR DEPOSITION, YOU CAN DO
14 IT IN THREE SESSIONS. YOU HAVE TO TELL SHANGRI-
15 LA AHEAD OF TIME WHAT THE AREAS OF INQUIRY IS
16 GOING TO BE IN EACH OF THOSE THREE SECTIONS SO
17 THAT THERE CAN BE ASSESSMENT ABOUT WHETHER THERE
18 IS ANY KIND OF UNDUE OVERLAP BETWEEN THEM. THEN
19 AFTER THAT, TO THE EXTENT THAT YOU USE UP YOUR
20 THREE AND THEN YOU FEEL LIKE YOU STILL NEED TO
21 TAKE IT ONE MORE TIME, IT WOULD BE LEAVE OF COURT
22 THEN AT THAT POINT. YOU HAVE GOT TO COME AND GET
23 LEAVE OF COURT. IS THAT SOMETHING THAT COULD
24 WORK AS FAR AS PLAINTIFFS ARE CONCERNED?

25 MR. RAGSDALE: YES. YES. SORRY, I

1 DIDN'T MEAN TO INTERRUPT YOU.

2 THE COURT: THAT'S FINE.

3 MR. RAGSDALE: YES, THAT WOULD WORK.

4 I THINK THAT WOULD ADDRESS A LOT OF THE CONCERNS,
5 FRANKLY, ALL THE CONCERNS THE DEFENDANTS HAVE
6 RAISED AND SOLVE THE QUANDARY WE FIND OURSELVES
7 IN.

8 THE COURT: ALL RIGHT.

9 MR. RAGSDALE: LET ME SAY THERE ARE
10 ALSO PROBABLY LIKELY TO BE A NUMBER OF ISSUES
11 REGARDING SCOPE, REGARDING -- MR. LAYTIN
12 MENTIONED AN END DATE. WE ARE GOING TO MAKE
13 PROGRESS ON THOSE. AS I SAID, THE ASSOCIATION
14 HAS BEEN FORTHCOMING IN THEIR WILLINGNESS TO TALK
15 ABOUT THOSE.

16 THE PROGRESS WE HAVE MADE, I WANT TO
17 MAKE SURE THAT THE COURT DOESN'T UNDERSTAND THAT
18 TO MEAN THERE WILL NOT BE DISPUTES. ONE OF THE
19 THINGS WE HAVE MADE PROGRESS ON IS IDENTIFYING
20 THOSE THINGS THAT WE CAN'T AGREE ON. BUT THAT'S
21 HELPFUL, TOO, FRANKLY.

22 THE COURT: IN ALL SERIOUSNESS, IT IS
23 HELPFUL TO UNDERSTAND THE NATURE OF THE
24 DISAGREEMENTS BETWEEN THE PARTIES AND WHAT THEY
25 ARE REALLY ABOUT. IT REALLY IS.

1 MS. YINGER, DO YOU WISH TO COMMENT
2 ABOUT THE -- I AM NOT SAYING PROPOSAL, BUT THE
3 30(B)(6) DEPOSITIONS BEING BROKEN INTO THREE
4 SECTIONS?

5 MS. YINGER: WELL, I THINK THE ISSUE,
6 YOUR HONOR, AGAIN, THAT WOULD BE A RULE THAT
7 APPLIES ACROSS THE BOARD WHEN WE THINK THAT IT IS
8 MUCH BETTER FOR THESE KIND OF USES WITH RESPECT
9 TO CONCRETE NOTICE OF DEPOSITION INSTEAD OF IN
10 THE ABSTRACT. SO, FOR EXAMPLE, THE SOUTH
11 CAROLINA DEPOSITION IS A GREAT EXAMPLE. WE HAVE
12 NOT TAKEN THE POSITION THAT THAT IS THE ONE AND
13 ONLY 30(B)(6) OF SOUTH CAROLINA. WE RECOGNIZE
14 THIS IS A SEPARATE ISSUE --

15 THE COURT: RIGHT.

16 MS. YINGER: -- INVOLVES SEPARATE
17 WITNESSES. AND WHAT WE THINK SHOULD HAPPEN,
18 WHICH IS HOW WE HAVE WORKED WITH MANY OF THE
19 COUNSEL REPRESENTING PLAINTIFFS IN THIS CASE AND
20 OTHER CASES IS THAT WE SHOULD MEET AND CONFER.
21 IF THEY ARE CONCERNED THAT THEY NEED TO TAKE A
22 SPECIFIC DEPOSITION THAT IS SOMEWHAT SHORT OF THE
23 WHOLE 30(B)(6), THEY SHOULD TALK TO US ABOUT IT,
24 WE SHOULD FIND OUT WHAT THE AREA IS SPECIFICALLY
25 SO THAT WE CAN EVALUATE WHETHER IT'S A SEPARATE

1 TOPIC OR LEAD TO OVERLAP AND DUPLICATION AND
2 REPEATED DEPOSITIONS OF SAME WITNESSES OR THINGS
3 LIKE THAT WHICH REALLY NEEDS TO BE AVOIDED.

4 SO REALLY, ALL WE ARE SAYING IS WE
5 WANT TO ADDRESS THIS WITH A SPECIFIC SITUATION
6 BEFORE US, BEFORE THE PARTIES, SO WE CAN EVALUATE
7 WHAT THE PLAINTIFFS ARE ACTUALLY ASKING FOR. WE
8 HAVE WORKED THESE OUT IN THE PAST WITH THESE SAME
9 LAWYERS AND WE HAVEN'T HAD TO HAVE KIND OF AN
10 OVER-ARCHING RULE THAT JUST MAY BE INAPPROPRIATE,
11 GIVEN THE HUGE VARIETY OF PARTIES IN THIS CASE.

12 THE COURT: AND I AM NOT SURE,
13 CERTAINLY I DON'T KNOW WHETHER, WITH RESPECT TO
14 ALL OF THE DEFENDANTS IN THE CASE WHETHER THE
15 PLAINTIFFS WOULD WANT TO BREAK UP THEIR 30(B)(6)
16 DEPOSITIONS INTO MULTIPLE SECTIONS FOR ALL OF
17 THEM. MAY BE FOR SOME DEFENDANTS, THEY MAY WANT
18 TO TAKE A SINGLE 30(B)(6) DEPOSITION. I DON'T
19 KNOW THAT.

20 BUT, IF, FOR EXAMPLE, THE PROCEDURE
21 WERE THAT THE PLAINTIFFS WANTED TO UTILIZE A
22 MULTIPLE SESSION FORMAT FOR TAKING A 30(B)(6)
23 DEPOSITION, THAT BEFORE THEY START THEY GIVE YOU
24 THE BREAKDOWN OF AREAS OF INQUIRY, THE TYPICAL
25 30(B)(6), THIS IS WHAT WE ARE GOING TO ASK ABOUT,

1 BUT THEY DO IT SHOWING YOU THE THREE DIFFERENT
2 SESSIONS. AND TO THE EXTENT THEN THAT YOU
3 BELIEVE THERE IS UNDUE OVERLAP, THERE CAN BE A
4 MEET AND CONFER BEFORE THE DEPOSITIONS START OR
5 YOU CAN SEEK SOME KIND OF RELIEF FROM THE COURT
6 OF SOME SORT.

7 BUT IF YOU GET THAT IN ADVANCE,
8 PLAINTIFFS SAY IN SESSION ONE WE ARE GOING TO ASK
9 ABOUT A, B, C. IN SESSION TWO, WE ARE GOING TO
10 ASK ABOUT C, D, E. AND IN SESSION THREE, WE ARE
11 GOING TO ASK ABOUT X, Y, Z. YOU GET THAT IN
12 ADVANCE. DOES THAT GIVE YOU ANY KIND OF SORT OF
13 FOUNDATION FOR EVALUATING OVERLAP, DUPLICATION,
14 THAT SORT OF THING?

15 MS. YINGER: IT DOES. IT DOES. IF WE
16 HAVE THAT IN ADVANCE, IT SOUNDS TO ME LIKE IT'S
17 REALLY THEIR COMPLETE 30(B)(6) NOTICE ANYWAY AND
18 THEN WE CAN MEET AND CONFER WITH THEM AND TALK
19 ABOUT THEY SEE THESE PARTICULAR AREAS AS SEPARATE
20 AND DISTINCT. WELL, HERE'S WHY SOME OF THEM ARE,
21 HERE'S WHY SOME OF THEM AREN'T. AND WE CAN WORK
22 THAT OUT.

23 SO, I THINK WE ARE THINKING ABOUT THE
24 SAME THING. IT'S JUST INSTEAD OF IMPOSING SOME
25 RULE WHICH GIVES THEM FREE REIN TO AUTOMATICALLY

1 DO THREE WHERE IT MAY BE INAPPROPRIATE TO DO
2 THREE, WE THINK WE SHOULD FOLLOW THE REGULAR RULE
3 AND GET THE NOTICE, MEET AND CONFER. IF THEY
4 REALLY FEEL THERE'S SOMETHING THAT NEEDS TO BE
5 BROKEN OFF, THEN LETS TALK ABOUT IT AND LETS
6 STRUCTURE IT IN A WAY SO THERE ISN'T THAT SORT OF
7 OVERLAP AND WE'RE NOT SUBJECTING PEOPLE TO
8 MULTIPLE DEPOSITIONS.

9 THE COURT; YOU RARELY SEE IT, BUT
10 THEORETICALLY 30(B)(6) AUTHORIZES TAKING
11 DEPOSITIONS FROM MULTIPLE WITNESSES. TYPICALLY,
12 THE 30(B)(6) DEPOSITION, THE CORPORATE ENTITY
13 PUTS UP ONE PERSON TO SPEAK FOR IT. BUT IN
14 THEORY 30(B)(6) SAYS THE CORPORATE ENTITY CAN
15 DESIGNATE ONE OR MORE PERSONS TO TESTIFY. SO
16 IT'S THEORETICALLY POSSIBLE THAT IN ANY 30(B)(6)
17 DEPOSITION SITUATION YOU MIGHT HAVE TWO OR THREE
18 OR FOUR DIFFERENT WITNESSES THAT ARE EXAMINED
19 WHICH WOULD OPEN THE POSSIBILITY THAT THOSE
20 WITNESSES COULD BE EXAMINED AT DIFFERENT TIMES.

21 MS. YINGER: THAT'S RIGHT. THOSE ARE
22 PRECISELY THE KIND OF SITUATIONS WE HAVE DEALT
23 WITH SOME OF THESE SAME PLAINTIFF'S COUNSEL
24 BEFORE. I EXPECT THERE WILL BE DEPOSITIONS IN
25 THIS CASE WHERE WE PUT UP MORE THAN ONE WITNESS

1 BECAUSE THE ISSUES COVER A BROAD RANGE OF
2 DIFFERENT BUSINESS FUNCTIONS.

3 THE COURT: RIGHT.

4 MS. YINGER: THAT'S TRUE WITH OTHER
5 CASES WE HAVE WORKED ON WITH THEM AND WE HAVE
6 WORKED THAT OUT. THAT'S WHY I AM OPTIMISTIC THAT
7 WE CAN DO THIS IN A WAY THAT MAKES SENSE FOR
8 EVERYONE AND AVOID ANY SORT OF ABUSE OR
9 DUPLICATION OR OVERLAP WITHOUT A RULE THAT MIGHT
10 NOT BE APPROPRIATE IN SOME INSTANCES.

11 THANK YOU.

12 THE COURT: ANYONE ELSE HAVE ANY
13 COMMENT ABOUT THAT? MR. MATESTA, ANYONE?

14 MR. MATESTA: YOUR HONOR, I HAVE GOT A
15 COMMENT ABOUT TECHNICAL LIMITATIONS BUT NOT THE
16 30 (B)(6).

17 THE COURT: GO AHEAD.

18 MR. MATESTA: IF I MAY BRIEFLY VISIT
19 THAT POINT BECAUSE I DON'T WANT THE COURT TO
20 LEAVE WITH THE IMPRESSION FROM THIS HEARING THAT
21 ALABAMA HAS BEEN DELAYING DISCOVERY ON THAT
22 FRONT.

23 WE HAD A MEET AND CONFER IN JUNE OF
24 THIS YEAR WHERE I INFORMED BOTH PLAINTIFFS THAT
25 WE WOULD NEED A FULL NINE MONTHS TO PROCESS

1 EXECUTIVE DATA FROM OUR CLAIM SYSTEM. WE ARE
2 TALKING ABOUT TENS OF MILLIONS OF CLAIMS, AND WE
3 HAVE GOT A LIMITED AMOUNT OF OPERATIONAL CAPACITY
4 TO FACILITATE THAT REQUEST. THAT WAS A REQUEST
5 WE MADE IN JUNE OF THIS YEAR TO GIVE THEM
6 VISIBILITY INTO THE TIME TABLES WE ARE TALKING
7 ABOUT HERE. I DID NOT RECEIVE A RESPONSE TO THAT
8 REQUEST. AND I FOLLOWED UP WITH A LETTER IN
9 SEPTEMBER OF THIS YEAR SAYING, GUYS, WE HAVE TO
10 HAVE YOUR FEEDBACK ON WHAT INFORMATION YOU WANT
11 OUT OF OUR CLAIM SYSTEM. AND IT'S OUR
12 EXPECTATION THAT WE NEED TO RESOLVE THIS BY THE
13 END OF THE YEAR SO WE CAN BEGIN TO DEVELOP THOSE
14 QUERIES AND PRODUCE IT OUT.

15 SO NOW, IN DECEMBER, WE ARE GOING TO
16 BE FACED WITH SOME LIMITATIONS ABOUT HOW DO WE
17 PUSH THAT OUT. BUT THIS IS AN ISSUE WE HAVE
18 GIVEN VISIBILITY TO FOR SIX MONTHS NOW. AND SO
19 IT'S OUR EXPECTATION THAT IF WE DON'T HAVE
20 AGREEMENT WITH THEM ON WHAT'S THE RIGHT SCOPE OF
21 OUR CLAIMS DATA, WE WILL PRESENT TO YOU A MOTION
22 REQUESTING APPROVAL FOR THE FIELDS THAT WE INTEND
23 TO EXPORT FROM THAT SYSTEM SO WE CAN GET THAT
24 DATA OUT IN SUFFICIENT TIME TO COMPLY WITH THE
25 COURT'S SCHEDULING ORDER.

1 THE COURT: ALL RIGHT. MR. RAGSDALE,
2 ANY COMMENTS ABOUT THAT?

3 MR. RAGSDALE: ONLY THAT I DON'T THINK
4 I MEANT TO IMPLY THAT THEY HAD BEEN DRAGGING
5 THEIR FEET. TO THE EXTENT IT SOUNDED THAT WAY,
6 I'M SORRY.

7 THE COURT: CERTAINLY, I RECOGNIZE THAT
8 WE ARE TALKING HERE ABOUT LARGE COMPUTER SYSTEMS.
9 SOME OF WHICH ARE, PERHAPS, WELL, IN COMPUTER
10 YEARS, QUITE OLD, IF THEY ARE TEN YEARS OLD.
11 THAT'S QUITE OLD FOR A COMPUTER SYSTEM. AND WE
12 ARE TALKING ABOUT MASSIVE AMOUNTS OF INFORMATION.
13 SO I UNDERSTAND THERE ARE PROBLEMS WITH. I DO
14 WANT TO MAKE SURE WE PROCEED IN AS EXPEDITIOUS
15 MANNER AS POSSIBLE. I UNDERSTAND THAT IT MAY BE
16 AN ESTIMATE FOR NINE MONTHS BUT IF WE CAN CUT
17 THAT DOWN TO SEVEN MONTHS, THEN WE NEED TO SEE
18 WHAT WE CAN DO ABOUT THAT.

19 MR. RAGSDALE: IF WE CAN DO IT IN A
20 MONTH, WE WOULD DO IT. IT'S JUST REALITIES WE
21 ARE FACING. SO I THINK WHAT YOU ARE GOING TO SEE
22 IS IT PUTS SOME PRESSURE ON THE EXPERTS IN TERMS
23 OF THE AMOUNT OF TIME THEY HAVE TO ADJUST THAT
24 INFORMATION. WE ARE GOING TO PUSH IT OUT AS
25 QUICKLY AS WE CAN, JUST THE REALITY OF THE

1 LIMITATIONS WE HAVE GOT.

2 MR. RAGSDALE: I WOULD SAY THIS THOUGH.
3 AND WE HAVE HAD THESE DISCUSSIONS WITH THE
4 LAWYERS FOR BLUE CROSS OF ALABAMA. SOMETIMES,
5 COURT DEADLINES TEND TO FOCUS THE ATTENTION OF
6 THE PARTIES TO MOVE EVEN MORE SWIFTLY THAN THEY
7 THOUGHT THEY WERE CAPABLE OF MOVING. SO, FOR
8 THAT REASON, WE MAY REVISIT THAT. BUT WE HAVE
9 BEEN, FRANKLY, HAVING VERY EFFECTIVE DIALOGUES
10 WITH BLUE CROSS OF ALABAMA IN PARTICULAR. WE ARE
11 TALKING ABOUT 65 THOUSAND FIELDS OF DATA. WE
12 RECOGNIZE THOSE TECHNICAL LIMITATIONS. WE
13 RESPECT THEM. WE ARE TRYING TO WORK WITH THEM.

14 THE COURT: WE HAVE ALREADY TOUCHED ON
15 IT A LITTLE BIT ALREADY, AND THAT IS THE
16 STREAMLINING ORDER THAT JUDGE PROCTOR HAS ENTERED
17 IN THE CASE THAT TENDS TO FOCUS VERY CLEARLY ON
18 BLUE CROSS OF ALABAMA. ARE THERE ANY OTHER
19 DIFFERENCES, CHANGES ABOUT THAT STREAMLINING,
20 THAT, FOCUSING THAT IMPACT DISCOVERY IN THE CASE?

21 I MEAN, IT SEEMS TO ME READILY APPARENT
22 THAT DISCOVERY FROM BLUE CROSS OF ALABAMA AND TO
23 A CERTAIN EXTENT THE ASSOCIATION SORT OF MOVES TO
24 THE HEAD OF THE LINE. I UNDERSTAND THAT. BUT
25 ARE THERE OTHER IMPACTS ON IT THAT I AM NOT

1 SEEING?

2 MR. RAGSDALE: I SUSPECT YOU SEE THEM
3 BUT I MAY HELP REMIND YOU.

4 ONE OF THE ISSUES I THINK IT FOCUSES
5 ON IS THE DEFENSE SOLELY TO THE SUBSCRIBERS
6 COMPLAINT INVOLVING THE FILE RATE DOCTRINE. AND
7 WE BELIEVE BECAUSE WE ARE NOW FOCUSED ON ALABAMA
8 AS THE FIRST STATE TO GO FORWARD WITH TRIAL THAT
9 THAT ALSO FOCUSES ON THE FILE RATE DOCTRINE AS IT
10 APPLIES IN ALABAMA. WE ANTICIPATE, NOT BECAUSE
11 WE ARE CLAIRVOYANT, BUT BECAUSE WE HAVE BEEN TOLD
12 THAT THE DEFENDANTS INTEND TO FILE A MOTION
13 FAIRLY SOON, MAYBE BY THE FIRST OF THE YEAR OR
14 SOMETHING ALONG THOSE LINES ON THE FILE RATE
15 DOCTRINE. THAT WILL, IN OUR OPINION, NECESSITATE
16 SOME EXPEDITED DISCOVERY, BUT THE GOOD NEWS IS,
17 IT SEEMS TO ME, IT WILL BE FOCUSED ON ALABAMA.
18 AND WE ANTICIPATE BEING ABLE TO IDENTIFY FOR THE
19 DEFENDANTS EXACTLY WHAT ADDITIONAL DISCOVERY WE
20 NEED ON THAT PARTICULAR ISSUE.

21 THERE MAY BE OTHER DISCREET ISSUES
22 INVOLVING ALABAMA BUT AT THIS POINT I AM NOT
23 AWARE OF THEM.

24 THE COURT: YES.

25 MR. BURKHALTER: CARL BURKHALTER BLUE

1 CROSS BLUE SHIELD OF ALABAMA.

2 JUDGE, I WANT TO SPEAK TO YOUR
3 QUESTION DIRECTLY ABOUT DOES THE STREAMLINING
4 ORDER HAVE AN IMPACT ON DISCOVERY OUTSIDE OF
5 ALABAMA, WHICH IS HOW I TOOK YOUR QUESTION.

6 THE COURT: YEAH. I GUESS WHAT I AM
7 TRYING TO FIGURE OUT IS, DO I NEED TO RETHINK THE
8 PRIORITIES OF DISCOVERY IN LIGHT OF WHAT HAS
9 CHANGED WITH THE STREAMLINE ORDER? CERTAINLY,
10 THERE IS GOING TO BE, SEEMS TO ME, TO BE A
11 GREATER SENSITIVITY TO MOVING ALONG THINGS THAT
12 IMPACT DISCOVERY ON THE BLUE CROSS OF ALABAMA
13 ISSUES.

14 MR. BURKHALTER: THAT'S RIGHT, JUDGE.
15 AND I THINK MY RESPONSE TO THAT IS THAT THE
16 PARTIES HAVE AN UNDERSTANDING THAT THE ALABAMA
17 CENTRIC DISCOVERY NEEDS TO BE DONE ON AN
18 ACCELERATED BASIS. AND WE ARE GOING TO WORK WITH
19 THEM AND COOPERATE WITH PLAINTIFFS TO MAKE SURE
20 THAT THAT IS DONE.

21 WE HAVE HAD, FOR EXAMPLE, SOME
22 DISCUSSIONS WITH PLAINTIFF'S COUNSEL ABOUT THE
23 TIME TABLE PROVISIONS, IN DISCOVERY ORDER NUMBER
24 ONE, THAT REQUIRES 90 DAYS NOTICE OR A CERTAIN
25 PERIOD OF NOTICE FOR DEPOSITION, PRODUCTION

1 REQUESTS, ET CETERA. AND WE ARE OPEN TO WORKING
2 WITH THEM TO RESOLVE THAT PROCESS INFORMALLY AND
3 SPEED THINGS UP AS NECESSARY. SO WE ARE NOT
4 GOING TO STAND ON CIRCUMSTANCE OR FORMALITY. WE
5 WANT TO GET THIS DONE AS QUICKLY AS POSSIBLE.

6 TWO THINGS, YOUR HONOR. FIRST, TO GO
7 BACK TO THE POINT ABOUT NEED FOR DISCOVERY.
8 WOULD THAT IT WERE SO THAT THE STREAMLINING ORDER
9 HAD THE EFFECT OF REDUCING, SIGNIFICANTLY
10 REDUCING THE AMOUNT OF DISCOVERY THAT'S GOING TO
11 BE REQUIRED IN THIS CASE. THE UNFORTUNATE
12 REALITY IS IT DOES NOT. THAT'S TRUE, I THINK,
13 FOR TWO REASONS.

14 THE FIRST REASON IS THAT, OF COURSE,
15 THE OTHER CASES ARE STILL OUT THERE.

16 THE COURT: CORRECT.

17 MR. BURKHALTER: THEY ARE NOT STAYED,
18 THEY ARE GOING FORWARD. SO IT IS A QUESTION OF
19 PRIORITIZATION.

20 THE SECOND, I DO WANT THE COURT TO
21 UNDERSTAND THAT THE DISCOVERY THAT THE
22 DEFENDANT'S ARE GOING TO NEED TO DEFEND AGAINST
23 THE ALABAMA CLASSES IS GOING TO BE NATION WIDE IN
24 SCOPE. IT'S GOING TO REQUIRE TO US PROVE OUR
25 POSITION IN THE CASE, TO CONDUCT DISCOVERY OF

1 OTHER BLUE PLANS, TO CONDUCT DISCOVERY TO SHOW
2 HOW THE BLUE CARD SYSTEM WORKS, CONDUCT DISCOVERY
3 TO SHOW ON THE QUESTION OF IN A WORLD WITHOUT THE
4 ESAs TO SHOW OTHER BLUES PROBABLY WOULDN'T ENTER
5 ALABAMA. DISCOVERY OF MARKETS WHERE THERE HAS
6 BEEN ENTRY BY AN INSURANCE COMPANY TO SHOW THE
7 EFFECT OF THAT, THAT THERE ARE WINNERS AND
8 LOSERS. IT'S A COMPLICATED STORY.

9 SO THAT'S A LONG-WINDED WAY, JUDGE, OF
10 SAYING WE UNDERSTAND THE PRIORITIZATION PRINCIPLE
11 BUT DISCOVERY THAT WE NEED TO CONDUCT IS
12 CERTAINLY GOING TO BE OUTSIDE OF ALABAMA IN
13 ADDITION TO IN ALABAMA.

14 THE COURT: SO THERE ARE GOING TO BE
15 RIPPLE EFFECTS -- WE CAN'T LOOK AT THIS CASE AS
16 JUST BEING LETS GET ALABAMA BLUE CROSS CRANKED UP
17 AND GET THAT DISCOVERY DONE BECAUSE IT'S GOING TO
18 HAVE RIPPLE EFFECTS ACROSS NOT ONLY THE
19 ASSOCIATION BUT OTHER BLUES AS WELL.

20 MR. BURKHALTER: THAT'S ABSOLUTELY
21 TRUE, YOUR HONOR.

22 THE COURT: AND I GUESS PARTICULARLY
23 GEOGRAPHICALLY NEAR GEORGIA, MISSISSIPPI, PLACES
24 LIKE THAT, MORE SO THAN MONTANA, SOMETHING OF
25 THAT SORT.

1 MR. BURKHALTER: THAT REMAINS TO BE
2 SEEN, YOUR HONOR. AN ISSUE OF GREAT IMPORTANCE
3 IN THIS CASE, AS I HAVE SAID, IN A BUT-FOR WORLD
4 WHERE YOU DIDN'T HAVE THESE ESAs, CAN THE
5 PLAINTIFFS DEMONSTRATE THAT ANOTHER BLUE PLAN
6 WOULD ENTER THE ALABAMA MARKET USING THE BLUE
7 TRADEMARK TO SELL INSURANCE, HEALTH INSURANCE, IN
8 CERTAIN --

9 THE COURT: COULDN'T WE PERHAPS SEE THE
10 MARKET IN ALABAMA BEING BLUE CROSS BLUE SHIELD OF
11 ALABAMA AND BLUE CROSS OF MONTANA?

12 MR. BURKHALTER: THAT'S EXACTLY RIGHT.
13 AND ARGUED -- CERTAINLY ONE WAY OF LOOKING AT
14 IT, YOUR HONOR, IS THAT POSSIBLY THE MOST LIKELY
15 CANDIDATES OF ENTRY WOULD BE THE ONES THAT WOULD
16 ARE CONTIGUOUS TO ALABAMA BUT THAT ISN'T
17 NECESSARILY THE CASE. AND SO WE NEED TO PROBE
18 INTO THAT AND I THINK THE PLAINTIFFS ARE GOING TO
19 WANT TO PROBE INTO THAT AS WELL TO TRY TO
20 DISCOVER WHAT THE WORLD WOULD LOOK LIKE ABSENT
21 THESE LICENSING RESTRICTIONS.

22 THANK YOU, JUDGE.

23 THE COURT: THANK YOU.

24 MS. JONES: YOUR HONOR, MEGAN JONES
25 FOR THE SUBSCRIBER PLANS.

1 I JUST HAVE A COUPLE THOUGHTS ABOUT
2 YOUR HONOR'S QUESTION ABOUT HOW WE SHOULD THINK
3 ABOUT THE PRIORITIES OF DISCOVERY. THESE ARE
4 KIND OF AT THE 50,000 FOOT LEVEL BUT I JUST
5 WANTED TO THROW THEM OUT THERE --

6 THE COURT: SURE.

7 MS. JONES: -- IN THE EARLY DAYS WHILE
8 WE ARE THINKING ABOUT THIS.

9 ONE OF THE THINGS WE ARE REALLY
10 CONCERNED ABOUT ON THE SUBSCRIBER SIDE AND THE
11 PROVIDER SIDE IS A CONCEPT ABOUT IF YOU ARE GOING
12 TO USE IT, PRODUCE IT. SO WHAT WE FLAGGED FOR
13 THE DEFENDANTS IN THESE EARLY DAYS IS IN THE NEXT
14 YEAR, IF YOU ANTICIPATE USING THAT DATA OR
15 DOCUMENT ON ECONOMICS DAY OR EXPERT REPORT DAY,
16 WE CERTAINLY DON'T WANT TO SEE IT FOR THE FIRST
17 TIME IN 2017. THAT'S SOMETHING I THINK WILL
18 BENCH MARK THIS ARGUMENT TODAY, WE ARE GOING TO
19 COME BACK TO THAT MANY TIMES. BUT THAT'S
20 SOMETHING WE HAVE SENT OVER SOME INFORMATION TO
21 THE DEFENDANTS ABOUT THAT, THAT WE WANT TO
22 DISCUSS THE PROCESS OF HOW WE CAN LIMIT THAT IN A
23 MEANINGFUL WAY.

24 THE OTHER ISSUE THAT WE FLAGGED FOR
25 DEFENDANTS, WE KNOW THAT ALABAMA FILE RATE

1 DOCTRINE MOTION IS COMING BUT IS THERE GOING TO
2 BE A GIANT RUSH OF 16 OTHER MOTIONS BEHIND IT?
3 AND WE HAVE ASKED IF THE DEFENDANTS KNOW THAT
4 THAT'S COMING TO LET US KNOW SO THAT WE CAN
5 REASONABLY SCHEDULE SOME DISCOVERY IN FRONT OF
6 YOUR HONOR SO WE DON'T HAVE THIS CHAOS OF MOTIONS
7 AND THEN COMING TO YOU AND ASKING HOW TO DO THAT.
8 SO WE HAVE ASKED DEFENDANTS TO IDENTIFY
9 THEMSELVES IF THEY ARE GOING TO FILE RATE
10 DOCTRINE IN 2016.

11 WE ARE NOT ASKING FOR A DATE CERTAIN
12 BUT WE WANT TO AT LEAST PUT A MARKER DOWN IF
13 THERE IS SOMETHING WE ARE GOING TO HAVE TO DEAL
14 WITH IN THE NEXT YEAR, LET'S OWN IT AND TRY TO
15 SCHEDULE IT.

16 AND SO THE OTHER THING THAT WE HAVE
17 ASKED DEFENDANTS TO DO IS IF YOU CAN FORECAST FOR
18 US, IF YOU WANT TO BE HEARD ON ECONOMICS DAY, LET
19 US KNOW. AND THE REASON WHY WE ARE DOING THAT IS
20 SO THAT WE AS SUBSCRIBER PLAINTIFFS AND PROVIDER
21 PLAINTIFFS CAN NOW, IN THE CALM OF 2016 AND EARLY
22 2017, ANTICIPATE WHAT KIND OF DISCOVERY WE NEED.

23 IF IN RESPONSE TO OUR REQUEST WE HEAR
24 THAT BLUE CROSS MONTANA WANTS TO BE HEARD ON
25 ECONOMICS DAY, THAT CERTAINLY CHANGES OUR

1 APPROACH TO BLUE CROSS MONTANA. SO WHAT WE ARE
2 TRYING TO DO IS GET EVERYBODY TO PUT THEIR CARDS
3 ON THE TABLE IN A FAIR WAY THAT THEY MAY WANT TO
4 BE HEARD SO THERE IS NOT THIS GIANT RUSH IN
5 NOVEMBER 2016 THAT, ALL OF A SUDDEN, WE HAVE
6 FOCUSED ON ALABAMA AND BCBSA AND 16 DEFENDANTS
7 SAYING HERE'S OUR EXPERT REPORTS. SO YOUR HONOR
8 CAN SENSIBLY PLAN WHAT'S COMING.

9 THE COURT: CERTAINLY I RECOGNIZE THAT
10 SOME KIND OF PROCEDURE FOR THE FILING OF
11 SUBSTANTIVE MOTIONS IMPLICATES DISCOVERY
12 SCHEDULING AS WELL. BUT TO THE EXTENT THAT THERE
13 NEEDS TO BE SOME KIND OF SCHEDULING ORDER OF SOME
14 SORT THAT SAYS, OKAY, WE UNDERSTAND WHERE THE
15 COURT SAYS BLUE CROSS BLUE SHIELD OF ALABAMA, YOU
16 FILED YOUR RATE DOCTRINE --

17 MS. JONES: RIGHT.

18 THE COURT: -- MOTION, OTHER
19 DEFENDANTS CANNOT DO SO UNTIL OCTOBER FIRST OR
20 SOMETHING OF THAT SORT SO IT CREATES SOME KIND OF
21 WINDOW FOR YOU TO DEAL WITH ONE PARTICULAR ONE.
22 THAT'S GOING TO BE PRETTY MUCH UP TO JUDGE
23 PROCTOR TO DO SOMETHING LIKE THAT BECAUSE IT
24 DEALS WITH FILING OF SUBSTANTIVE MOTIONS.

25 I AGREE WITH YOU THAT HOW THAT PLAYS

1 OUT IMPLICATES THE DISCOVERY THAT I AM TRYING TO
2 OPERATE, BUT I THINK THAT PRETTY MUCH WE ARE
3 GOING TO HAVE TO WAIT AND SEE WHAT KIND OF
4 MARCHING ORDERS --

5 MS. JONES: WE ARE NOT ASKING YOUR
6 HONOR FOR RELIEF ON THAT --

7 THE COURT: SURE.

8 MS. JONES: -- WE ARE FORECASTING
9 THAT MAY BE COMING YOUR WAY.

10 THE COURT: I UNDERSTAND.

11 MS. JONES: THEN THE LAST THING THAT I
12 WANT TO PUT SQUARE IN FRONT OF YOU IS I THINK
13 THERE IS GOING TO BE CENTRAL TO A LOT OF OUR
14 DISCOVERY DISPUTES IN THE NEXT YEAR IS WE ALL
15 WERE HEARING FROM A LOT OF THE DEFENDANTS IS WE
16 WANT TO DO THIS ONCE. WE WANT TO DO THIS ONCE.
17 DON'T COME BACK TO ME, DON'T COME BACK TO ME. WE
18 ARE GOING TO DO THIS ONCE, IT'S EXPENSIVE,
19 RESOURCES.

20 I JUST WANT TO EXPLAIN TO YOU THAT THE
21 BOX THAT PUTS THE PLAINTIFFS IN BECAUSE WE ARE AT
22 THE BEGINNING OF OUR CASE, WE'RE JUST GETTING
23 DISCOVERY. AND I WANT TO FORECAST FOR YOU THAT
24 IT'S GOING TO BE HARD FOR US TO SAY HANDS DOWN,
25 WE ARE NEVER COMING BACK IN, BY JANUARY 2016.

1 SO I THINK THAT'S GOING TO BE
2 SOMETHING WE ARE GOING TO HAVE TO WORK THROUGH
3 TOGETHER IN THE CASE. I THINK WITH 30(B)(6)
4 SOLUTION YOU OUTLINED IS VERY HELPFUL, BECAUSE
5 WHAT THAT ALLOWS US TO DO IS TAKE A 30(B)(6)
6 ISSUE ON DATA, WHICH IS SOMETHING WE ARE ALL
7 STRUGGLING WITH AND TRYING TO GET IN LINE. AND
8 IF WE CAN GET SOME INFORMATION ABOUT DATA EARLY
9 THEN WE HAVE A BETTER CHANCE OF SAYING THIS IS
10 WHAT WE WANT AND GO DO IT.

11 THOSE ARE MY GENERAL THOUGHTS.

12 THE COURT: PERHAPS BY DOING IT THAT
13 WAY, IT INCREASES THE CHANCE THAT WE CAN DO THIS
14 ONCE.

15 MS. JONES: CORRECT.

16 THE COURT: MS. YINGER.

17 MS. YINGER: THANK YOU, YOUR HONOR. I
18 JUST WANTED TO RESPOND TO A COUPLE OF POINTS,
19 TOTALLY, WE TOTALLY UNDERSTAND THE NOTION THAT IF
20 WE ARE GOING TO RELY ON DOCUMENTS IN SUPPORT OF
21 ITEMS WE ARE BRINGING TO THE COURT OR DEFENSE,
22 WHAT HAVE YOU, THAT WE NEED TO PRODUCE THOSE TO
23 THE OTHER SIDE. WE UNDERSTAND THAT.

24 WE HAVE MADE A PROPOSAL TO THE
25 PLAINTIFF REGARDING THE FILE RATE MOTIONS. WE

1 UNDERSTAND THAT THE, THE MOTION WITH RESPECT TO
2 ALABAMA SUBSCRIBERS, A MOTION FOR SUMMARY
3 JUDGMENT BASED ON THE FILE RATE DOCTRINE BARRING
4 THE CLAIMS OF THE ALABAMA SUBSCRIBERS IS GOING TO
5 BE IN THE NEAR TERM. AND THEN WE UNDERSTAND THAT
6 WAS THE INTENT OF PART OF THE STREAMLINING ORDER.

7 WE ALSO SUSPECT THAT OTHERS ARE GOING
8 TO WANT TO BRING FILE RATE MOTIONS AND WE HAVE
9 TOLD PLAINTIFFS THAT AS THOSE DEFENDANTS ARE
10 READY TO BRING MOTIONS WITH RESPECT TO OTHER
11 SUBSCRIBER PLAINTIFFS IN OTHER STATES, WE WILL
12 MEET AND CONFER WITH THEM. WE WILL FIND OUT WHAT
13 DISCOVERY THEY THINK THEY NEED THAT HASN'T
14 ALREADY GONE OUT TO THEM. A NUMBER OF PLAINTIFFS
15 HAVE ALREADY PRODUCED RATE FILING DISCOVERY.
16 WE'LL MEET AND CONFER AND WE'LL SET A DISCOVERY
17 SCHEDULE. SO WE UNDERSTAND THAT'S AN ISSUE. WE
18 HAVE MADE A PROPOSAL.

19 REGARDING THE ISSUE ABOUT LET'S DO THIS
20 ONCE, MS. JONES JUST SAID, FOR EXAMPLE, THEY
21 WOULD LIKE TO DO A DATA DEPOSITION,
22 30(B)(6) DEPOSITION. IF THAT'S THEIR STRATEGIC
23 DECISION AND THEY WANT TO GO AHEAD, WE HAVE BEEN
24 GIVING THEM A LOT OF INFORMATION WITHOUT THEM
25 HAVING TO TAKE DEPOSITIONS OR PROPOUND

1 INTERROGATORIES OR ANYTHING OF THAT NATURE. BUT
2 IF THEY DECIDE THEY WANT TO GO AHEAD AND TAKE A
3 DEPOSITION, AGAIN THAT'S SOMETHING WE SHOULD MEET
4 AND CONFER ABOUT.

5 JUST LIKE THE SOUTH CAROLINA DEPOSITION
6 IS A SEPARATE ISSUE. IT COULD EASILY BE THAT A
7 DATA DEPOSITION ABOUT A SPECIFIC DATA SYSTEM OR
8 SPECIFIC DATA ISSUE IS A SEPARATE DEPOSITION.

9 THE COURT: I MEAN, I ENVISION THE DATA
10 DEPOSITIONS AS BEING MORE SORT OF EDUCATIONAL
11 THAN ANYTHING ELSE. HOW DO WE COME TO UNDERSTAND
12 WHAT YOUR DATA SYSTEM LOOKS LIKE, WHAT IT
13 OPERATES ON, HOW IT CAN BE SEARCHED, ALL THAT
14 SORT OF STUFF? AND THAT ENABLES US AT THAT POINT
15 TO BETTER UNDERSTAND HOW WE CAN GET TO WHAT WE
16 ARE LOOKING FOR.

17 MS. YINGER: THAT'S RIGHT, YOUR
18 HONOR.

19 THE COURT: THAT'S MORE EDUCATIONAL.

20 MS. YINGER: THAT'S RIGHT;
21 EDUCATIONAL. IN FACT, THAT'S THE KIND OF
22 INFORMATION WE HAVE BEEN PROVIDING, WE WILL
23 CONTINUE TO BE PROVIDING. AND THE REASON WHY WE
24 ARE DOING THAT, THE REASON WHY WE ARE TRYING TO
25 MAKE PROGRESS ON THINGS LIKE RELEVANT DATA FIELDS

1 AND RELEVANT SYSTEMS IS SO WE CAN BE AS EFFICIENT
2 AS POSSIBLE. WE ARE TALKING ABOUT AN ENORMOUS
3 AMOUNT OF DATA.

4 AS MR. MATESTA MENTIONED, IT'S GOING
5 TO TAKE BLUE CROSS BLUE SHIELD OF ALABAMA NINE
6 MONTHS WORKING DILIGENTLY, MAXING OUT THEIR
7 SYSTEM, TO ROLL OUT JUST CLAIMS DATA. THAT'S
8 JUST CLAIMS DATA. SO THE ONLY DO IT ONCE THING,
9 WE ARE TALKING ABOUT MILLIONS AND MILLIONS AND
10 MISSION OF DOLLARS. IT'S NOT JUST BECAUSE THAT'S
11 CONVENIENT FOR OUR CLIENTS. WE'RE TALKING ABOUT
12 A HUGE AMOUNT OF RESOURCE AND EXPENSE AND BURDEN.
13 SO THE IDEA THAT YOU WOULD DO THIS MULTIPLE TIMES
14 REALLY IS NOT THE WAY MODERN DISCOVERY SHOULD
15 WORK.

16 AND WE ARE WILLING TO BE -- WE ARE
17 WILLING TO GIVE THEM INFORMATION WITH OR WITHOUT
18 DEPOSITION, HOWEVER THEY WANT TO PROCEED SO THAT
19 WE CAN BE AS EFFICIENT AS POSSIBLE.

20 MS. JONES: AND WE ECHO THAT. WE HAVE
21 NO INTEREST IN DOING THIS MULTIPLE TIMES.

22 THE COURT: I ASSUME IT'S COSTING THE
23 PLAINTIFFS MONEY AS WELL TO DO THINGS MULTIPLE
24 TIMES. AND I SAY THAT WITH ALL DUE REGARD FOR
25 THE LEGITIMACY OF IT. THE FINANCES HERE IS AN

1 IMPORTANT ISSUE FOR BOTH SIDES IN THIS CASE. WE
2 FORGET RULE ONE TALKS ABOUT DOING THINGS
3 INEXPENSIVELY. THAT'S NOT HAPPENING HERE.

4 MS. YINGER: WE HOPE WE CAN GET TO A
5 POINT WHERE THE SCOPE IS A LITTLE MORE NARROW AND
6 THAT, I THINK, WILL ENABLE BOTH SIDES TO COMPLY
7 WITH THE EXPEDITED DISCOVERY SCHEDULE.

8 THE COURT: ANYONE ELSE WISH TO COMMENT
9 ABOUT HOW DISCOVERY MAY BE DIFFERENT -- IF YOU
10 THINK ABOUT IT DIFFERENTLY IN LIGHT OF THE
11 STREAMLINING ORDER?

12 ALL RIGHT. ANOTHER ITEM THAT I HAD ON
13 MY AGENDA IS TO JUST CHECK WITH THE MOTION, CHECK
14 WITH PARTIES ABOUT THE MOTION TO AMEND DISCOVERY
15 ORDER NUMBER ONE. IT'S BEEN PRESENTED AS BEING A
16 JOINT MOTION. I JUST WANTED TO MAKE SURE
17 EVERYBODY IS STILL HAPPY WITH WHATEVER THE
18 AMENDED MOTION IS.

19 MR. RAGSDALE: YOUR HONOR, I KNOW WE
20 ARE. I THINK IT'S READY TO BE ENTERED. WE SENT
21 A PROPOSED ORDER, I HOPE?

22 THE COURT: WE DID. JUST WANT TO MAKE
23 SURE EVERYBODY IS STILL ON BOARD WITH IT RIGHT
24 NOW.

25 MS. WEST: YES, SIR.

1 THE COURT: WE'LL TAKE CARE OF THAT
2 THEN.

3 THE NEXT IS THE MOTION TO AMEND
4 DISCOVERY ORDER NUMBER THREE, WHICH IS THE
5 30(B)(6) DEPOSITION ISSUE. WE SORT OF KICKED
6 THAT AROUND A LITTLE BIT. BUT DOES EITHER SIDE
7 WISH TO ADD ANYTHING TO THAT? MR. RAGSDALE?

8 MR. RAGSDALE: NO, YOUR HONOR.

9 THE COURT: MS. YINGER?

10 MS. YINGER: NO, THANK YOU.

11 THE COURT: THE NEXT ITEM I HAVE THEN
12 IS BLUE CROSS BLUE SHIELD MICHIGAN'S MOTION FOR
13 CLARIFICATION OF THE PREVIOUS DISCOVERY ORDER
14 THAT I ENTERED ABOUT THE ANTITRUST LITIGATION
15 THERE IN MICHIGAN.

16 MR. CAMPBELL?

17 MR. CAMPBELL: MAY IT PLEASE THE COURT:
18 GOOD AFTERNOON, YOUR HONOR. THANKS FOR HEARING
19 THIS.

20 YOUR HONOR, I FIRST WANT TO PUT THIS IN
21 THE CONTEXT OF ORDER NUMBER 10 WHERE WE ARE ON
22 THAT.

23 AS YOU RECALL, YOUR HONOR, YOU ORDERED
24 US TO PRODUCE ALL OF THE NON-PARTIES SO THAT THE
25 PLAINTIFFS CAN BEGIN THE JOURNEY OF TRYING TO GET

1 CONSENTS. WE HAVE DONE THAT. WE HAVE PRODUCED
2 THOSE IN FULL. WE HAVE ALSO PRODUCED THE
3 ATTORNEYS AT THE TIME THAT WE ARE AWARE OF, YOUR
4 HONOR, SO THAT CONSENT CAN BE FACILITATED.

5 SOMEWHAT CONTRARY TO WHAT WAS SUGGESTED
6 IN THE BRIEF FILED YESTERDAY, THE MOTION TO
7 CLARIFY IS A VERY LIMITED MOTION, YOUR HONOR, AND
8 IT DOES NOT AFFECT WHAT WE ARE DOING UNDER YOUR
9 ORDER NUMBER 10 OTHERWISE. WE, FRANKLY, HAVE AN
10 OBLIGATION ON JANUARY 14TH TO PRODUCE A
11 SUBSTANTIAL NUMBER OF PUBLIC FILINGS. WE ARE
12 ACTUALLY GOING TO PRODUCE THOSE IN DECEMBER,
13 EARLY. WE ARE GOING TO CONTINUE WORKING WITH THE
14 PLAINTIFFS TO FACILITATE THE PRODUCTION AS SOON
15 AS WE RECEIVE THE CONSENTS. OR IN THE CASE WHERE
16 WE DON'T RECEIVE THE CONSENTS, THE REDACTED
17 MATERIAL AS YOU HAVE ORDERED IT.

18 WHAT WE HAVE TODAY, YOUR HONOR, IS A
19 MOTION TO CLARIFY OVER WHETHER, I THINK ONE ISSUE
20 IS ORDER NUMBER 10, MICHIGAN IS REQUIRED TO
21 PRODUCE ELEVEN EXPERT REPORTS AND EIGHT
22 DEPOSITION OF EXPERTS. OUT OF THE HUNDREDS OF
23 THOUSANDS OF PAGES THAT WE ARE IN THE PROCESS OF
24 PRODUCING, YOUR HONOR, THAT IS WHAT THE ISSUE IS
25 TODAY. THE REASON WE HAVE RAISED IT AT THIS TIME

1 RATHER THAN LETTING IT LINGER AND THERE BE
2 UNCERTAINTY, YOUR HONOR, IS YOUR ORDER DID NOT
3 EXPLICITLY ADDRESS IT EITHER IN THE FORM OF THE
4 EXPERT DEPOSITION OR THE REPORTS. THERE ARE 11
5 REPORTS IN THE AETNA CASE, THERE ARE 8
6 DEPOSITIONS. OUR POSITION, YOUR HONOR, IS THAT
7 WHILE WE ARE PRODUCING ALL OF THE UNDERLYING
8 FACTS AND EVIDENCE ON WHICH THOSE REPORTS WERE
9 BASED AND THOSE OPINIONS WERE BASED SUBJECT TO
10 THE CONFIDENTIALITY ORDERS, WHICH MAY BE WAIVED,
11 WE DO NOT BELIEVE THE EXPERT OPINIONS THEMSELVES
12 SHOULD BE PRODUCED.

13 WE HAVE CITED A NUMBER OF CASES, YOUR
14 HONOR, IN OUR BRIEF. I WON'T SPEND A LOT OF TIME
15 ON THIS. I KNOW WE HAVE A LOT ON THE PLATE THIS
16 AFTERNOON. BUT UNDER SSL SERVICES CASE, THE
17 ARROWHEAD CASE AND THE OTHER CASES IN OUR BRIEF,
18 IT'S CLEAR THOSE REPORTS SHOULD NOT BE ORDERED
19 WHERE, NUMBER ONE, THE EXPERTS IN THAT CASE, IN
20 THE AETNA CASE, ARE NOT EXPERTS IN THIS CASE. SO
21 YOU DON'T HAVE IDENTITY OF EXPERTS --

22 THE COURT: THEY ARE COMPLETELY
23 DIFFERENT PEOPLE.

24 MR. CAMPBELL: AS FAR AS I KNOW AT THIS
25 POINT, YOUR HONOR. AS FAR AS I KNOW AT THIS

1 POINT. FACTUAL DATA IS GOING TO BE COMPLETELY
2 PRODUCED ON WHICH THOSE REPORTS WERE BASED
3 SUBJECT TO YOUR ORDER NUMBER 10.

4 NOW, THE THREE CASES THE PLAINTIFFS
5 HAVE CITED, THE ONLY THREE CASES THEY HAVE CITED,
6 THE JENKS CASE, THE HUSSEY CASE AND THE OTHER
7 CASE THEY HAVE CITED WERE CASES WHERE YOU HAD THE
8 IDENTICAL EXPERT IN THE PRIOR CASE ALSO BE USED
9 IN THE CASE BEFORE THE COURT ON THAT DISCOVERY
10 MOTION. AND IN THAT CASE, THE COURT CARVED OUT A
11 LIMITED EXCEPTION BASED ON THE FACT THAT THE
12 PARTIES WERE ENTITLED TO THE PRIOR EXPERT REPORTS
13 FOR IMPEACHMENT PURPOSES TO DETERMINE WHETHER THE
14 EXPERT HAD CHANGED HIS OR HER OPINIONS AND TO SEE
15 IF THEY HAD CHANGED THEIR METHODOLOGY.

16 THE COURT: ONE OF THOSE THINGS THAT'S
17 SORT OF IMPLIED BY THE EXPERT REPORT IN 26(A)(2)
18 WHEN IT TALKS ABOUT THE CONTENTS OF THE REPORT
19 INCLUDING THE IDENTIFICATION OF THE CASES WHERE
20 THE EXPERT HAS TESTIFIED LIVE OR BY DEPOSITION
21 FOR THE LAST FOUR YEARS PRIOR TO THAT, THE WHOLE
22 PURPOSE OF THAT IS TO GET TO THE IMPEACHMENT
23 SITUATION. IT'S SORT OF IMPLIED IN THE RULE.

24 MR. CAMPBELL: YES, SIR. AND UNDER
25 RULE 26 IT REQUIRES A LIST OF THOSE PRIOR

1 TESTIMONIES AND IN CERTAIN CASES, YOUR HONOR, THE
2 COURTS HAVE SAID WE ARE GOING TO ALLOW YOU TO
3 HAVE THOSE REPORTS TO TEST THAT EXPERT'S
4 CREDIBILITY. TO BE HONEST WITH THE COURT, THERE
5 IS A SPLIT OF AUTHORITY EVEN ON THAT WHERE YOU
6 HAVE AN IDENTITY OF EXPERTS. IN THE SURLESS CASE
7 WE CITED, IN THE TRUMP CASE YOU HAD, EVEN IN
8 THOSE CASES USING THE SAME IDENTICAL EXPERT, THE
9 COURT SAID WE WILL LET YOU IDENTIFY THE CASES BUT
10 I WILL NOT GIVE YOU THE REPORTS. BUT IN THIS
11 CASE, IT'S UNPRECEDENTED WHAT THEY ARE ASKING
12 FOR, YOUR HONOR, AND THEY HAVEN'T CITED A CASE
13 WHERE YOU HAVE A DIFFERENCE -- YOU DON'T HAVE
14 SAME EXPERTS, IT'S A DIFFERENT CASE AND THEY ARE
15 GETTING ALL THE FACTUAL DATA THAT WE ARE
16 PRODUCING, YOUR HONOR.

17 NOW, THEY SAY, WELL, WE NEED TO KNOW
18 WHAT THE EXPERT'S POSITION WAS IN MICHIGAN. MY
19 POSITION ON THAT, YOUR HONOR, IT'S IRRELEVANT.
20 IT'S IRRELEVANT AND IT'S NOT CALCULATED REDOING
21 THIS FOR EVIDENCE. THE UNDERLYING FACTUAL DATA
22 IS IRRELEVANT AS YOU HAVE FOUND IN ORDER NUMBER
23 10 AND WE ARE PRODUCING IT. BUT THE OPINION IS
24 NOT ADMISSIBLE, THE PRIOR OPINIONS ARE NOT
25 ADMISSIBLE FOR ANY PURPOSE UNLESS SOMETHING

1 CHANGES AND THOSE EXPERTS GET HIRED --

2 THE COURT: IF THOSE EXPERTS SHOW UP IN
3 THIS CASE IT BECOMES A DIFFERENT BALL GAME.

4 MR. CAMPBELL: BECOMES A DIFFERENT
5 BALL GAME.

6 THE COURT: YEAH.

7 MR. CAMPBELL: WHERE WE STAND TODAY,
8 AND YOUR HONOR, UNDER, IF IT CHANGES, THERE IS
9 GOING TO BE PLENTY OF TIME FOR YOU TO DEAL WITH
10 THIS BECAUSE IT'S GOING TO BE IN THE SPRING
11 BEFORE ALL OF THIS IS COMPLETED, SPRING OF 2016.

12 BUT WHERE WE STAND TODAY, YOUR HONOR,
13 WE STRONGLY BELIEVE THAT THOSE REPORTS AND THOSE
14 DEPOSITIONS ARE DIFFERENT EXPERTS IN A DIFFERENT
15 CASE ARE IRRELEVANT BECAUSE THEY ARE NOT
16 ADMISSIBLE FOR ANY PURPOSE AND NOT GOING TO LEAD
17 TO ADMISSIBLE EVIDENCE, DISCOVERY OF ADMISSIBLE
18 EVIDENCE, AND THEY HAVE ALL OF THE ACTUAL
19 UNDERPINNINGS AND THE DATA AND THE EVIDENCE.

20 SO FOR TODAY'S PURPOSES, YOUR HONOR,
21 WE WOULD SIMPLY LIKE A CLARIFICATION THAT THE
22 ELEVEN EXPERT REPORTS AND THE EIGHT DEPOSITIONS
23 DO NOT HAVE TO BE PRODUCED AT THIS TIME.

24 NOW, IF THOSE EXPERTS GET HIRED, THE
25 COURT CAN REVISIT IT IN THIS CASE. IN THE

1 MEANTIME, YOUR HONOR, WE ARE GOING FORWARD
2 PRODUCING ALL THE OTHER DOCUMENTS AND WE HOPE TO
3 HAVE THAT COMPLETED AS THE COURT ANTICIPATES
4 SOMETIME IN MARCH OR EARLY IN THE SPRING. BUT
5 THAT WILL CONTINUE. BUT WE DO BELIEVE THIS IS
6 IMPORTANT, YOUR HONOR. ONE OF THE POSITIONS THE
7 PLAINTIFFS RAISED BUT WE DIDN'T ARGUE THIS BEFORE
8 BUT IT IS SET OUT EXPLICITLY IN OUR BRIEF IN
9 OPPOSITION TO THE MOTION TO COMPEL AT PAGES SIX
10 AND SEVEN. IN FACT, WE CITE THE SAME CASES THERE
11 THAT WE HAVE CITED IN THE BRIEF THAT WE ARE
12 ARGUING FROM TODAY, YOUR HONOR.

13 SO FOR THOSE REASONS, WE ASK AT THIS
14 POINT THAT PART OF THE DISCOVERY PROCESS OF THESE
15 DOCUMENTS NOT BE REQUIRED TO BE PRODUCED SUBJECT
16 TO IF THE EXPERTS SHOULD BE HIRED IN THIS CASE OR
17 ONE OR MORE OF THEM, WE CAN COME BACK AND REDUCE
18 THEM.

19 THANK YOU, YOUR HONOR.

20 THE COURT: MR. RAGSDALE?

21 MR. RAGSDALE: I AM AFRAID WE ARE
22 SEEING A TREND, AND NOT A GOOD ONE. AND THAT IS
23 THIS COURT RULES ON DISCOVERY MOTIONS AFTER THEY
24 ARE FULLY BRIEFED, FULLY ARGUED. IN THIS CASE,
25 IT WAS FULLY ARGUED MORE THAN ONCE. AND THEN

1 AFTER THIS COURT TAKES THE TIME AND MAKES THE
2 COMPREHENSIVE RULING, THE DEFENDANTS ASK YOU TO
3 RECONSIDER THAT. AND THAT'S REALLY WHAT THIS
4 MOTION IS. NOT A MOTION TO CLARIFY BUT A MOTION
5 TO RECONSIDER.

6 AT THE LAST ARGUMENT, WE EXPRESSLY SAID
7 AND MR. CAMPBELL EXPRESSLY SAID WHAT THEY ARE
8 SEEKING IS EXPERT REPORTS AND EXPERT DEPOSITIONS.
9 AND THIS COURT GRANTED THAT MOTION, FINDING THAT
10 THOSE DOCUMENTS WERE DISCOVERABLE AND THAT THEY
11 WERE NOT PRIVILEGED IN ANY FASHION.

12 I BELIEVE THAT WE NEED TO RESOLVE
13 DISCOVERY MOTIONS ONCE, NOT MULTIPLE TIMES, AND I
14 THINK THAT IS WHAT'S BEING ASKED HERE.

15 IN ADDITION, THE ARGUMENT HAS EVOLVED
16 FAIRLY DRAMATICALLY ON THE PART OF MICHIGAN IN
17 THIS CASE. ORIGINALLY, THE ARGUMENT WAS THIS HAS
18 NOTHING TO DO WITH THIS CASE BECAUSE IT DOESN'T
19 INVOLVE MFN. THIS COURT MADE THAT SHRIFT
20 RELATIVELY SHORT IN ITS ORDER IN WHICH IT
21 RECOGNIZED MFNS WERE OBVIOUSLY AN ISSUE THAT
22 WOULD REQUIRE SOME DISCOVERY IN THIS CASE. AND
23 THAT THE ARGUMENT BY MICHIGAN WAS THEY WERE NOT
24 RELEVANT TO ANY CLAIM THAT WOULD HAVE TO GO
25 FORWARD. THEIR ARGUMENT NOW IS THAT SOMEHOW IT

1 WOULD BE UNFAIR FOR US TO SEE THOSE DOCUMENTS AND
2 EXPERT REPORTS. AND THE STATEMENT THAT THEY HAVE
3 IN THEIR BRIEF IS THAT IT WOULD PREJUDICE THEM
4 FOR US TO HAVE THOSE REPORTS WITHOUT ANY
5 EXPLANATION HOW THEY WOULD BE PREJUDICED IN THIS
6 CASE. AND HOW US HAVING ACCESS TO THOSE EXPERT
7 REPORTS AND EXPERT DEPOSITIONS WOULD CAUSE THEM
8 ANY HARM AT ALL IN THIS CASE.

9 IN FACT, WHAT THEY DO IS DEMONSTRATE IT
10 WOULD HELP TO EXPEDITE MATTERS IF WE HAD THOSE
11 EXPERT REPORTS AND EXPERT DEPOSITIONS BECAUSE
12 THEY SPECIFICALLY SAY THAT WE SHOULD HAVE TO DO
13 OUR OWN WORK, WHICH I GOT TOLD A LOT AS A CHILD
14 AND MAYBE AS A LAWYER AS WELL. BUT THEIR WHOLE
15 POINT IS THAT THEY SHOULD NOT HAVE TO GIVE US
16 THEIR WHEEL, WE SHOULD HAVE TO REINVENT OUR OWN.
17 AND IN THIS INSTANCE, ALL WE ARE SAYING IS HAVING
18 ACCESS TO THAT INFORMATION, THE ARGUMENTS ABOUT
19 ADMISSIBILITY, HEARSAY, ANY OF THOSE KIND OF
20 THINGS FRANKLY ARE RED HERRINGS. THEY DON'T HAVE
21 ANYTHING TO DO WITH WHETHER OR NOT THE
22 INFORMATION MIGHT BE DISCOVERABLE.

23 IN THIS CASE, WHERE THERE IS NO
24 PREJUDICE TO MICHIGAN TO PROVIDING THOSE EXPERTS
25 REPORTS AND DEPOSITIONS AND IN WHICH THEY WOULD

1 SERVE TO EXPEDITE SOME OF THE INFORMATION, I
2 WOULD ALSO NOTE THAT THE ANSWER THAT YOU GOT TO
3 WHETHER OR NOT THESE INDIVIDUALS ARE EXPERTS,
4 WELL, AT THIS POINT, NO ONE IS DESIGNATED
5 EXPERTS. I DIDN'T HEAR MICHIGAN COMMITTING TO
6 THE FACT THAT THEY WOULD NOT USE THESE
7 INDIVIDUALS AS EXPERTS, SIMPLY THAT WE WOULD LIKE
8 TO DELAY MAKING THAT DISCLOSURE AND HOPEFULLY
9 DELAY HAVING TO PROVIDE THIS INFORMATION.

10 WE BELIEVE THAT PROVIDING THE
11 INFORMATION, THE EXPERT DEPOSITIONS, AND EXPERT
12 REPORTS WOULD HELP US FOCUS THE ISSUES,
13 PARTICULARLY AS REGARDS THE ISSUES THAT WERE
14 PREVALENT IN THAT LITIGATION WHICH OVERLAPPED
15 WITH THE ISSUES THAT EXIST IN THIS LITIGATION
16 WITHOUT CAUSING ANY PREJUDICE TO MICHIGAN. HOW
17 ARE THEY HURT BY US HAVING ACCESS TO THOSE EXPERT
18 REPORTS UNLESS IT'S BECAUSE THEIR EXPERTS IN THIS
19 CASE ARE GOING TO TAKE OPPOSITE OR DIFFERENT OR
20 DIFFERING APPROACHES TO IT. THEN THEY'RE
21 PREJUDICED BY THE FACT THAT THEY ARE NOT ALLOWED
22 TO TAKE CONFLICTING POSITIONS IN THE TWO CASES,
23 AND THAT'S NOT THE KIND OF PREJUDICE THAT SHOULD
24 BE PROTECTED BY THEIR COURT.

25 THE LAST THING THAT I WOULD SAY IS THAT

1 IN THIS INSTANCE WHERE I THINK THE COURT TOOK THE
2 TIME TO ADDRESS THIS ISSUE, THAT REVISITING IT
3 AGAIN AND AGAIN WITH THE POSSIBILITY, FRANKLY,
4 THAT THIS ISSUE MAY ALSO, FRANKLY, GO UP TO JUDGE
5 PROCTOR AFTER THIS, AS IS TRUE OF ANY ISSUE THAT
6 YOU ADDRESS, BUT THIS ISSUE NEEDS TO BE AND WAS
7 PUT TO BED PREVIOUSLY.

8 THE COURT: MR. CAMPBELL.

9 MR. CAMPBELL: VERY BRIEFLY, YOUR
10 HONOR.

11 NUMBER ONE, YOUR HONOR, WE RAISE THIS
12 BECAUSE FRANKLY THE LAWYERS AT THE LAST HEARING
13 MAY NOT HAVE DONE A GOOD ENOUGH JOB FOCUSING ON
14 EXPERT REPORTS AND DEPOSITIONS AND THAT'S LARGELY
15 MY FAULT. BUT, WE RAISED IT BECAUSE EXPERT
16 REPORTS AND EXPERT DEPOSITIONS ARE NOT MENTIONED
17 IN THE COURT'S ORDER. I THINK IT'S DUE TO BE
18 RAISED. IF YOU LOOK AT PAGE FIVE AND SIX WHERE
19 YOUR HONOR ADDRESSES DEPOSITIONS BY THEMSELVES,
20 EXPERT DEPOSITIONS ARE NOT ADDRESSED ON PAGES
21 FIVE AND SIX. YOU DEAL WITH OTHER DEPOSITIONS.

22 WE SIMPLY BELIEVE YOUR HONOR THAT THE
23 LAW UNDER RULE 26 DOES NOT SUPPORT THE
24 PLAINTIFF'S POSITION AT THIS POINT BECAUSE THERE
25 IS NOT IDENTITY OF EXPERTS. THERE IS NO CASE LAW

1 THEY HAVE CITED, NOT ONE SINGLE CASE, THAT SAYS
2 YOU CAN HAVE PRODUCED IN A SEPARATE CASE REPORTS
3 OF A DIFFERENT EXPERT IN A DIFFERENT CASE. AND
4 WHERE WE ARE, YOUR HONOR, AT THIS POINT IS THE
5 COURT HAS ORDERED A VERY WELL THOUGHT OUT,
6 RATIONAL SCHEME FOR US TO PRODUCE DOCUMENTS UPON
7 CONSENT. IF THE EXPERTS TURNS OUT TO BE SOME
8 IDENTITY, YOUR HONOR, DOWNSTREAM, WE ARE TALKING
9 ABOUT ELEVEN REPORT AND EIGHT DEPOSITIONS. WE
10 ARE NOT TALKING ABOUT INTERFERING WITH THE FLOW
11 OF WHAT WE ARE PRODUCING HERE. AND WE ARE NOT
12 HERE TO REVISIT WHAT WE ARGUED BEFORE. THIS IS
13 NOT ADDRESSED, WE DON'T THINK, YOUR HONOR, IN THE
14 ORDER AND WE FEEL LIKE AT THIS POINT IN TIME
15 THESE PARTICULAR DOCUMENTS UNDER THE LAW SHOULD
16 NOT BE PRODUCED.

17 BASED ON ALL THE CASES WE HAVE CITED,
18 PARTICULARLY SSL CASE WHICH CLEARLY SAYS
19 PLAINTIFFS ARE NOT ENTITLED TO GET A SEPARATE
20 EXPERT'S REPORT. AND SOME OF THE CASES EVEN SAY
21 WHERE THERE IS AN IDENTITY YOU ARE NOT ENTITLED
22 TO GET THEM.

23 AS FAR AS PREJUDICE, YOUR HONOR, YOU
24 KNOW, IF YOU ORDER US TO PRODUCE THESE, WE DON'T
25 KNOW WHERE IT LEADS. THEY ARE NOT GOING TO BE

1 ADMISSIBLE. LET'S ASSUME, FOR EXAMPLE, AN
2 EXPERT IN THE MICHIGAN AETNA CASE AND A DIFFERENT
3 EXPERT IN ALABAMA COME UP WITH DIFFERENT
4 OPINIONS. THEY'RE INDEPENDENT EXPERTS. THAT'S
5 NOT AN ADMISSION OF BLUE CROSS MICHIGAN. THAT
6 INCONSISTENT LEGAL POSITION, INDEPENDENT EXPERTS
7 COME UP WITH DIFFERENT OPINIONS ALL THE TIME. IF
8 THEY ARE THE SAME EXPERT, IT BECOMES RELEVANT FOR
9 IMPEACHMENT. BUT WE DON'T HAVE THAT. THAT'S A
10 MISSING COG NOW, YOUR HONOR. THAT'S WHY THEY
11 CAN'T CITE ANY CASE LAW BECAUSE THERE IS NOT ANY
12 TO SUPPORT THEIR POSITION. AND FOR THOSE
13 REASONS, YOUR HONOR, AT THIS POINT IN TIME WHILE
14 WE ARE GOING FORWARD THIS, WE ASK THE COURT TO
15 SIMPLY CLARIFY YOUR ORDER AND SAY THOSE FEW
16 DOCUMENTS, THOSE ELEVEN REPORTS AND EIGHT
17 DEPOSITIONS DO NOT HAVE TO BE PRODUCED AT THIS
18 TIME. THE PARTIES CAN COME BACK AND VISIT THIS
19 AS WE ARE GOING TO BE GOING ALONG IN THIS PROCESS
20 FOR THE NEXT SIX MONTHS. AND I APPRECIATE IT,
21 YOUR HONOR.

22 THE COURT: LET ME MAKE SURE I
23 UNDERSTAND THE PROCEDURAL POSTURE OF WHAT
24 HAPPENED IN THE MICHIGAN CASE. MY UNDERSTANDING
25 IS WHILE THESE EXPERT REPORTS WERE GENERATED,

1 EXPERTS WERE DEPOSED, THE MICHIGAN CASE WAS
2 SETTLED SHORT OF TRIAL. SO IT'S NOT LIKE ANY OF
3 THEM TESTIFIED IN FRONT OF A JURY OR JUDGE OR
4 ANYTHING OF THAT SORT.

5 MR. CAMPBELL: NOT ONLY DID NONE OF
6 THEM TESTIFY, YOUR HONOR, THERE WERE DAUBERT
7 MOTIONS PENDING AT THE TIME OF THE SETTLEMENT.
8 THERE HAD NEVER BEEN A RULING IN THAT CASE
9 WHETHER ANY OF THESE EXPERT OPINIONS CAN EVEN BE
10 OFFERED INTO EVIDENCE. EVEN BEFORE THE DAUBERT
11 HEARINGS THAT THE CASE WAS SETTLED. SO THAT IS
12 THE RISK OF PREJUDICE IS THAT THEY GET THESE
13 PARTICULAR OPINIONS WHICH HAVE NEVER BEEN RULED
14 ADMISSIBLE AND THEY CAN BE INFECTED OR PUT INTO
15 AN EXPERT'S OPINION HERE AND HAVING TO FERRET
16 THAT OUT DOWNSTREAM IN A MOTION IN LIMINE BASED
17 ON EXPERIENCE, YOUR HONOR, IS VERY DIFFICULT, IF
18 NOT IMPOSSIBLE, FOR A DEFENDANT. THAT'S WHY THE
19 COURTS SPEAK OF PREJUDICE. WHAT GOOD DOES IT
20 SERVE THE PLAINTIFF BECAUSE IT'S NOT ADMISSIBLE,
21 AND IT COULD PREJUDICE DEFENDANT BY BEING
22 INFECTING SOME EXPERT'S REPORT DOWNSTREAM. IT'S
23 BETTER IF YOU WAIT AND SEE IF YOU HAVE AN
24 IDENTITY OF EXPERTS YOU CAN REVISIT IT. BUT AT
25 THIS POINT IN TIME, YOUR HONOR, THERE IS NOT ANY

1 CASES THAT SUPPORT THEIR POSITION BUT THEY SIMPLY
2 GET IT PELL MELL AS PART OF THIS PRODUCTION.

3 THE COURT: WELL, IN THIS --

4 MR. CAMPBELL: -- NONE OF THOSE
5 OPINIONS WERE EVER VETTED BY THE COURT BY JUDGE
6 HOOD ARE FOUND TO BE ADMISSIBLE.

7 THE COURT: THAT'S WHY I WANT TO BE
8 SURE WHAT HAPPENED IN THE MICHIGAN CASE. WHILE
9 THE REPORTS WERE GENERATED, DEPOSITIONS WERE
10 TAKEN, FROM A STANDPOINT OF A COURT USING THEM AS
11 EVIDENCE, AS AN EVIDENTIARY FOUNDATION FOR A
12 RULING, WHETHER THAT BE IN A PRETRIAL MOTION OR
13 WHETHER IT BE PRESENTATION OF EVIDENCE TO A JURY
14 OR ANOTHER FACT FINDER IN THE CASE, MY
15 UNDERSTANDING IS THOSE REPORTS WERE NEVER
16 UTILIZED IN A WAY THAT A COURT RELIED UPON.

17 MR. CAMPBELL: THAT IS CORRECT, YOUR
18 HONOR. THAT IS ABSOLUTELY CORRECT. IT NEVER
19 REACHED THAT STAGE. SETTLEMENT WAS REACHED
20 BEFORE THAT.

21 THE COURT: RIGHT. ALL RIGHT.

22 MR. CAMPBELL: THANK YOU, YOUR HONOR.

23 THE COURT: MR. RAGSDALE?

24 MR. RAGSDALE: VERY BRIEFLY, YOUR
25 HONOR.

1 FIRST, MY UNDERSTANDING, AND I WAS
2 OBVIOUSLY NOT IN THE MICHIGAN CASE BUT NEITHER
3 WAS MR. CAMPBELL, IS THAT THERE WAS A MOTION FOR
4 SUMMARY JUDGMENT THAT WAS ARGUED. AND TO THE
5 EXTENT ANY OF THOSE EXPERT REPORTS WERE RELIED
6 UPON BY EITHER SIDE IN THAT MOTION FOR SUMMARY
7 JUDGMENT, WE THINK THAT WOULD PUT THEM IN THE --

8 THE COURT: WAS SUMMARY JUDGMENT MOTION
9 RULED ON BY THE COURT?

10 MR. RAGSDALE: MY UNDERSTANDING IS
11 THEY SURVIVED AT SUMMARY JUDGMENT.

12 THE COURT: ALL RIGHT.

13 MR. RAGSDALE: IN ADDITION TO THAT, I
14 THINK WE HAVE JUST HEARD THAT THOSE MOTIONS, THAT
15 THE EXPERT REPORTS WERE ATTACHED TO DAUBERT
16 MOTIONS THAT WERE FILED. SO AS A CONSEQUENCE, WE
17 BELIEVE IF THEY WERE REQUIRED TO PRODUCE THOSE
18 MOTIONS WITH THE ATTACHMENTS, THAT SATISFIES IN
19 OUR ABILITY TO GET THOSE EXPERT REPORTS WHICH
20 WERE, IN FACT, SUBMITTED TO THE COURT WITH THOSE
21 PENDING MOTIONS.

22 THE COURT: MR. CAMPBELL, ANYTHING
23 ELSE?

24 MR. CAMPBELL: JUST THAT MY
25 UNDERSTANDING, YOUR HONOR, THE COURT DID NOT RELY

1 ON THOSE EXPERT OPINIONS IN ANY WAY IN ITS
2 RULINGS. AS THE COURT FOUND, THERE WERE MATERIAL
3 FACTS IN DISPUTE AND ALLOWED THE CASE TO GO
4 FORWARD. IT WAS THEN THAT THE CASE WAS SETTLED.

5 THE COURT: ALL RIGHT.

6 MR. CAMPBELL: THANK YOU, YOUR HONOR.

7 MR. STENERSON: YOUR HONOR, TODD
8 STENERSON FROM MICHIGAN. THE COURT IN THE AETNA
9 CASE DID NOT RULE ON SUMMARY JUDGMENT BEFORE THE
10 CASE WAS SETTLED.

11 THE COURT: SO SUMMARY JUDGMENT
12 REMAINED PENDING BEFORE IT WAS SETTLED?

13 MR. STENERSON: YES, YOUR HONOR.

14 THE COURT: THANK YOU. ALL RIGHT.
15 ANYTHING ELSE ANYONE WANTS TO ADD TO THE MICHIGAN
16 ISSUE?

17 ALL RIGHT. THANK YOU. WE'LL TAKE
18 THAT AND DO SOMETHING WITH IT, HOPEFULLY WITH NOT
19 CRANBERRY STAINS ALL OVER IT.

20 THE FINAL THING THAT I HAVE ON MY LIST
21 FOR DISCUSSION THIS AFTERNOON IS THE
22 ASSOCIATION'S MOTION -- RATHER THE PLAINTIFF'S
23 MOTION TO COMPEL THE ASSOCIATION TO DE-DESIGNATE
24 CERTAIN DOCUMENTS AS HAVING PREVIOUSLY BEEN
25 DESIGNATED AS CONFIDENTIAL.

1 MR. RAGSDALE?

2 MR. RAGSDALE: THANK YOU, YOUR HONOR.

3 WE START WITH THE PREMISE THAT WE BELIEVE IN THIS
4 COURT AND OTHERS THAT CONFIDENTIALITY SHOULD BE
5 THE EXCEPTION, NOT THE RULE. AND THAT THERE HAS
6 TO BE GOOD CAUSE SHOWN FOR DOCUMENTS TO BE
7 WITHHELD FROM A PUBLIC PROCEEDING. WE THINK THAT
8 IS PARTICULARLY TRUE IN THIS LITIGATION WHICH
9 BOTH THE DEFENDANTS AND, FRANKLY, THE PLAINTIFFS
10 HAVE REPEATEDLY NOTED THE PUBLIC INTEREST
11 INVOLVED IN THIS WIDE RANGING LITIGATION DEALING
12 WITH THE HEALTH CARE SYSTEM AND ALL THE ISSUES
13 THAT GO WITH THAT. AND AS A CONSEQUENCE, WE
14 BELIEVE THERE IS A PUBLIC INTEREST THAT SHOULD BE
15 TAKEN INTO ACCOUNT. BUT EVEN APART FROM THAT, WE
16 BELIEVE THAT AT THIS POINT, AND THIS ALSO,
17 FRANKLY, DEALS WITH THE ISSUE OF WE WANT TO MAKE
18 SURE SOMETHING DOESN'T BECOME A TREND ANY MORE
19 THAN IT ALREADY HAS, IS THAT THERE SHOULD NOT BE
20 WHOLESALE, BLANKET CONFIDENTIALITY APPLIED TO ALL
21 DOCUMENTS SIMPLY BECAUSE THAT'S THE EASIEST THING
22 TO DO.

23 AND IN THIS INSTANCE, WE CONTEND THAT
24 THE DOCUMENTS THAT WE HAVE IDENTIFIED THAT WERE
25 PRODUCED BY THE ASSOCIATION, THAT WERE ALL GIVEN

1 A DESIGNATION OF CONFIDENTIALITY WAS UNWARRANTED.
2 THAT THERE IS NOT A REASON FOR THOSE DOCUMENTS TO
3 BE KEPT CONFIDENTIAL. WE START WITH THE PREMISE
4 THAT THEY ARE NOT TRADE SECRETS, DON'T INVOLVE,
5 WE BELIEVE, CONFIDENTIAL RESEARCH OR DEVELOPMENT
6 OR THE KIND OF THINGS THAT ARE DEFINED NOT ONLY
7 IN THE RULES BUT IN THIS COURT'S PROTECTIVE ORDER
8 THAT WAS ENTERED IN ORDER TO PROTECT THOSE.

9 AS A CONSEQUENCE, THAT'S WHY WE
10 CONTACTED THE ASSOCIATION AND ASKED THAT THEY
11 RECONSIDER THE DESIGNATION OF THOSE WHOLESALE
12 DOCUMENTS AS BEING CONFIDENTIAL. AT THAT POINT,
13 I THINK BOTH THE LAW AND THE PROTECTIVE ORDER
14 MAKES IT CLEAR THAT THE BURDEN SHIFTS TO THE
15 DEFENDANT TO SHOW A REASON WHY THOSE DOCUMENTS
16 HAVE TO BE CONFIDENTIAL. AND IN THIS INSTANCE, I
17 DO THINK IT'S IMPORTANT TO POINT OUT, MOST IF NOT
18 ALL OF THESE DOCUMENTS ARE DECADES OLD. MOST OF
19 THEM ARE MORE THAN 30 YEARS OLD. THEY INVOLVE
20 HISTORICAL ASPECTS WHICH ARE RELEVANT TO THIS
21 CASE, OBVIOUSLY, AND ALSO RELEVANT TO THE
22 DETERMINATION OF WHETHER OR NOT THEY REALLY
23 INVOLVE THE KIND OF CONFIDENTIALITY THAT BOTH THE
24 PROTECTIVE ORDER AND THE RULES OF CIVIL PROCEDURE
25 INTENDED TO PROTECT, PARTICULARLY GIVEN THE

1 HISTORICAL NATURE. EVEN DOCUMENTS REGARDING THE
2 KENNEDY ASSASSINATION ARE EVENTUALLY MADE PUBLIC.
3 I DO WANT TO MAKE IT CLEAR I AM NOT ACCUSING THEM
4 OF ANY COMPLICITY AT THIS POINT IN THAT.

5 THE COURT: SOMEBODY WAS THE MAN WITH
6 THE UMBRELLA.

7 MR. RAGSDALE: THAT'S EXACTLY RIGHT.
8 AS A CONSEQUENCE, WE BELIEVE THESE DOCUMENTS DO
9 NOT FALL INTO THE KIND OF CATEGORY WHERE THE
10 LIMITED EXCEPTION OF CONFIDENTIALITY OUGHT TO
11 APPLY IN PUBLIC PROCEEDINGS LIKE THIS LITIGATION.
12 REGARDLESS OF THE FACT THAT THE PARTIES MAY BE
13 PRIVATE PARTIES, THIS LITIGATION IS NOT PRIVATE
14 AND IT OBVIOUSLY INVOLVES THIS COURT AND THE
15 PUBLIC INTEREST. MORE IMPORTANTLY, WE BELIEVE
16 THESE HISTORICAL DOCUMENTS, IN PARTICULAR, ARE
17 SUBJECT TO SCRUTINY BECAUSE OF THE WAY THEY WERE
18 TREATED BY BLUE CROSS. AND THERE IS MUCH
19 DISCUSSION IN THE PAPERS ABOUT THE CUNNINGHAM'S
20 BOOK. I DO BELIEVE WE SHOULD PROBABLY GET SOME
21 ROYALTIES FOR THE NUMBER OF BOOKS WE HAVE MANAGED
22 TO SELL FOR THAT. IT MAY BE BACK ON THE BEST
23 SELLER LIST.

24 BUT IN THIS INSTANCE, THOSE DOCUMENTS
25 REFERENCE EVENTS THAT WERE DISCUSSED AT LENGTH BY

1 THE CUNNINGHAMS IN THEIR BOOK. AND WE POINT OUT
2 MAYBE THE CUNNINGHAMS' BOOK IS NOT THE DETACHED
3 DISSERTATION IT MIGHT HAVE BEEN REPRESENTED TO
4 BE. AND, IN FACT, MIGHT BE A PROPAGANDA PIECE
5 THAT WAS PAID FOR BY BLUE CROSS. I DON'T THINK
6 THAT'S NECESSARILY A CONCLUSION THAT THIS COURT
7 HAS TO REACH. BUT WHAT I DO THINK THIS COURT AND
8 IT'S MADE MANIFEST BY A COMPARISON OF THE
9 EXCERPTS WE HAVE PROVIDED FROM THE CUNNINGHAMS
10 BOOK AND THE DOCUMENTS THAT WE ARE TALKING ABOUT
11 IS THESE VERY SUBJECTS, THE SUBJECTS THAT WE ARE
12 DISCUSSING IN TERMS OF THE BUSINESS PLAN AND THE
13 ASPECTS THAT OCCURRED 30 OR MORE YEARS AGO ARE
14 NOT CONFIDENTIAL. THEY ARE NOT THE KIND OF TRADE
15 SECRET INFORMATION THAT WOULD NORMALLY BE SUBJECT
16 TO CONFIDENTIALITY. INSTEAD, THEY WOULD HAVE
17 BEEN DISCUSSED OPENLY NOT ONLY IN THIS BOOK BUT
18 IN THE COURT DECISION THAT WE CITED AS WELL. AND
19 THEY ARE NOT SUBJECTS TO THE NEED FOR THE KIND OF
20 PROTECTION THAT BLUE CROSS WOULD AFFIX TO THESE
21 PARTICULAR DOCUMENTS.

22 WE WOULD ALSO POINT OUT, AND I THINK
23 IT IS WORTH NOTING THAT THE CUNNINGHAM CONSULTING
24 CONTRACT IN WHICH BLUE CROSS REPEATEDLY POINTS
25 OUT WAS SUBJECT TO A CONFIDENTIALITY AGREEMENT,

1 THAT THAT AGREEMENT ITSELF EXPIRED MORE THAN 20
2 YEARS AGO. IT EXPIRED IN 1991. AND AS A
3 CONSEQUENCE, WE ARE REALLY TALKING ABOUT BLUE
4 CROSS'S HISTORY. AND THE FACT THAT THOSE
5 DOCUMENTS ARE A HISTORICAL NATURE AND WERE MADE
6 AVAILABLE TO HISTORIANS TO REPORT UPON. NOW,
7 BLUE CROSS DOESN'T WANT THEM AND WANTS TO BE ABLE
8 TO EXERCISE THE SAME KIND OF CONTROL THAT THEY
9 EXERCISED OVER THE CUNNINGHAMS IN TERMS OF WHAT
10 COULD BE WRITTEN AND WHAT COULD NOT BE WRITTEN.

11 THE LAST THING I WOULD SAY, JUDGE,
12 THIS IS NOT AN IDLE EXERCISE ALTHOUGH WE DO THINK
13 IT'S AN IMPORTANT POINT THAT WE NOT GET IN A
14 SITUATION WHERE EVERY DOCUMENT THAT IS PRODUCED
15 OR MOST DOCUMENTS THAT ARE PRODUCED ARE JUST
16 ROUTINELY MARKED CONFIDENTIAL WHEN THERE IS NO
17 NEED FOR THAT TO OCCUR. BUT IN ADDITION TO THAT,
18 THERE ARE REAL WORLD PROBLEMS WITH THE FACT THAT
19 CONFIDENTIAL DOCUMENTS CANNOT BE SHOWN TO NON-
20 PARTIES. AN ASPECT OF THIS CASE THAT I THINK IS
21 IMPORTANT TO TAKE INTO ACCOUNT IS THAT THERE IS A
22 NEED FOR US TO TALK ABOUT THIS CASE AND ABOUT
23 THIS LITIGATION, ABOUT THE IMPORT OF THIS
24 LITIGATION AND ABOUT THE EFFECT OF THIS
25 LITIGATION WITH PEOPLE WHO ARE NOT YET PARTIES TO

1 THIS CASE AND MAY NEVER BE PARTIES TO THIS CASE
2 BUT MAY HAVE AN INTEREST IN TALKING ABOUT IT, WHO
3 MAY BE CLIENTS OF THE VARIOUS PLAINTIFFS' FIRMS
4 OR POTENTIAL CLIENTS OF THE PLAINTIFFS' FIRMS SO
5 THERE ARE PRACTICAL CONSEQUENCES AND
6 ADMINISTRATIVE CONSEQUENCES OF THAT.

7 I THINK MAYBE THE MOST TELLING ASPECT
8 OF THAT IS WHEN WE WERE WITH JUDGE PROCTOR
9 RECENTLY, WE COULD NOT INCLUDE SOME OF THESE
10 EXHIBITS IN OUR POWER POINT PRESENTATION MADE TO
11 THE COURT BECAUSE OF THE FACT THEY HAD BEEN
12 DESIGNATED AS CONFIDENTIAL BY THE DEFENDANTS. WE
13 WERE REQUIRED INSTEAD TO PRINT OFF THAT POWER
14 POINT PRESENTATION AND PRESENT IT TO JUDGE
15 PROCTOR DIRECTLY AS OPPOSED TO BEING ABLE TO EVEN
16 DISCUSS IT. SO THERE ARE ADMINISTRATIVE
17 INCONVENIENCES, OTHER REASONS WHY THESE DOCUMENTS
18 SHOULD BE AVAILABLE TO THE PUBLIC THAT HAVE
19 NOTHING TO DO WITH THE DIRE THREATS THAT BLUE
20 CROSS HAS SUGGESTED.

21 AND WE WOULD SIMPLY SAY THAT NOW IS
22 THE TIME FOR THIS COURT, WE THINK, TO MAKE A
23 CLEAR DECLARATION THAT CONFIDENTIALITY SHOULD BE
24 THE RARE EXCEPTION AND NOT THE RULE THAT'S
25 APPLIED BY THE DEFENDANTS WHEN THEY RESPOND TO

1 DISCOVERY REQUESTS.

2 THE COURT: MS. DONNELL.

3 MS. DONNELL: GOOD AFTERNOON, YOUR
4 HONOR. SARAH DONNELL AGAIN FOR THE ASSOCIATION.
5 IT'S CLEAR HERE WHEN WE TALKED ABOUT HALF AN HOUR
6 AGO ABOUT WHAT SHOULD BE PRIORITIZED IN THIS
7 CASE, WHETHER CERTAIN DOCUMENTS ARE CONFIDENTIAL
8 IS NOT A PRIORITY WHEN WE ARE REALLY TRYING TO
9 MOVE FORWARD, GET DOCUMENTS OUT, MOVE QUICKLY.
10 THAT BEING SAID, PLAINTIFFS ARE NOT BEING
11 PREJUDICED IN THEIR CASE PREPARATION BY THE
12 MARKING OF DOCUMENTS AS CONFIDENTIAL. THEIR
13 COMPLAINT IS NOT THAT WE ARE NOT PRODUCING
14 DOCUMENTS. AGAIN, WE MADE OUR FIFTH PRODUCTION
15 OF UNSTRUCTURED HISTORICAL DOCUMENTS LAST FRIDAY.
16 WE KNOW HAVE 88,000 DOCUMENTS, PAGES OF DOCUMENTS
17 OUT. CONTRARY TO PLAINTIFFS' STATEMENT THERE HAS
18 NOT BEEN A BLANKET DESIGNATION OF CONFIDENTIALITY
19 ON THOSE 88,000 PAGES OF DOCUMENTS.

20 DOCUMENTS HAVE BEEN PRODUCED WITHOUT A
21 CONFIDENTIALITY DESIGNATION. PLAINTIFFS FOCUS
22 MERELY ON THESE 6,000 PAGES OF DOCUMENTS OUT OF
23 THAT LARGER SET AND CALLED THAT A BLANKET
24 DESIGNATION. THAT'S NOT ACCURATE WITH RESPECT TO
25 OUR PRODUCTION IN TOTAL.

1 THE PREMISE OF PLAINTIFFS' MOTION IS
2 THERE IS SOME PUBLIC INTEREST THAT REQUIRES THESE
3 DOCUMENTS TO BE NOT CONFIDENTIAL AND I THINK
4 THAT'S CONTRARY TO ELEVENTH CIRCUIT LAW IN THE
5 ALEXANDER GRANT CASE, THE ANDERSON CASE, WHICH
6 BOTH RECOGNIZE THAT DISCOVERY IS A PRIVATE
7 PROCESS. IT MIGHT TAKE PLACE IN A PUBLIC FORUM
8 IN THE COURT BUT WHILE THE PARTIES ARE EXCHANGING
9 DOCUMENTS, THOSE DISCOVERY DOCUMENTS ARE NOT PART
10 OF THE PUBLIC RECORD. EVEN WHEN THEY ARE, AND
11 THE PURPOSE OF THAT DISCOVERY AS THOSE CASES
12 RECOGNIZE IS TO PREPARE THE PARTIES TO GO TO
13 TRIAL. IT'S NOT TO USE THEM FOR SOME BROADER
14 AGENDA FOR PUBLIC INTEREST, PUBLIC PURPOSE. AND,
15 SO, THE COMMON LAW RIGHT OF ACCESS DOESN'T EVEN
16 ATTACH, IF AT ALL, UNTIL DOCUMENTS BECOME A
17 SUBSTANTIVE PART OF A DISPOSITIVE MOTION OR FOR
18 TRIAL. SO THE FUNDAMENTAL PREMISE THAT THERE IS
19 SOME PUBLIC RIGHT OR PUBLIC INTEREST TO THESE
20 DISCOVERY DOCUMENTS IS FLAWED AND CONTRARY TO
21 ELEVENTH CIRCUIT LAW.

22 AND THIS IS A REAL CONCERN FOR US IN
23 THIS CASE. WE HAVE, PLAINTIFFS' HAVE A WEB SITE
24 DEVOTED TO THIS LITIGATION. REAL CONCERN FOR US
25 THAT DOCUMENTS WE PRODUCE IN THIS LITIGATION THAT

1 ARE MEANT TO AID FOR PREPARATION OF TRIAL AND END
2 UP ON THAT WEB SITE. REAL CONCERN AS WELL,
3 WEEKLY, FREQUENT ARTICLES IN THE BIRMINGHAM
4 BUSINESS JOURNAL ON THIS CASE. AGAIN, A LARGE
5 CONCERN FOR US THAT THESE DOCUMENTS END UP OUT
6 THERE WITHOUT CONTEXT WITH PLAINTIFFS' VIEW POINT
7 AND BECOME SOMETHING THAT POTENTIAL JURORS SEE
8 AND INFLUENCE THEIR VIEW OF THE CASE WELL IN
9 ADVANCE OF ANY TRIAL IN THIS MATTER.

10 SO, I THINK THERE IS MANY CASES,
11 ALEXANDER GRANT, ANDERSON, CASES WE CITED THAT
12 REJECT SOME BIG NOTION THERE IS A PUBLIC
13 INTEREST, PARTICULARLY WHERE THERE IS NO THIRD
14 PARTY COMING IN SEEKING THESE DOCUMENTS, SUCH AS
15 THE PRESS, AS YOU MIGHT HAVE IN THOSE CASES.

16 AS A PREMISE, THE ASSOCIATION HAS GONE
17 THROUGH AND WHILE REVIEWING DOCUMENTS, DONE A
18 DOCUMENT BY DOCUMENT REVIEW OF THE
19 CONFIDENTIALITY. THE DOCUMENTS THAT WERE MARKED
20 CONFIDENTIAL IN THESE 6,000 PAGES RELATED TO THE
21 ASSEMBLY OF PLANS IN LONG TERM BUSINESS STRATEGY.
22 BOTH OF THOSE INITIATIVES WERE THE UNDERLYING
23 INITIATIVES, THE DOCUMENTS RELATED TO THEM WERE
24 CONFIDENTIAL. THEY WERE NOT DISCLOSED TO
25 COMPETITORS.

1 THE FACT THAT THEY, THE MERE FACT THEY
2 WERE DISCLOSED AS SIMILAR PLANS MENTIONED IN ONE
3 SENTENCE IN ESSENTIAL BENEFITS DECISION, NOTHING
4 MORE, NOTHING LESS. IT SAYS THERE IS ASSEMBLY OF
5 PLANS GOING ON RIGHT NOW. THAT CAN'T BE CONFUSED
6 WITH THE WAIVER OF CONFIDENTIALITY BECAUSE THE
7 DETAILS OF THE ASSEMBLY OF PLANS WERE NOT MADE
8 PUBLIC IN THAT OPINION.

9 NOR IF YOU REALLY LOOK AT THE
10 CUNNINGHAMS BOOK, CUNNINGHAM DISCUSSING THE
11 EFFECT OF LONG TERM BUSINESS STRATEGY AND THE
12 EFFECT OF ASSEMBLY OF PLANS. IF YOU REALLY LOOK
13 AT THE PARAGRAPH THAT THE PLAINTIFFS CITE IN
14 THEIR MOTION, MAY BE LESS THAN A HANDFUL OF
15 SENTENCES THAT COME FROM ANY DOCUMENT FROM THE
16 ASSEMBLY OF PLANS.

17 AND SO WITH RESPECT TO THEIR ARGUMENT
18 THAT THAT SOMEHOW AMOUNTED TO A WAIVER BECAUSE
19 INITIATIVES ARE MENTIONED IN THOSE MATERIALS,
20 THAT DOESN'T HOLD WATER, YOUR HONOR.

21 WITH RESPECT TO THEIR --

22 THE COURT: THESE ARE ALL 30 OR 40 YEAR
23 OLD DOCUMENTS NOW.

24 MS. DONNELL: -- THEY ARE NOT 40 YET.
25 THEY ARE OLDER DOCUMENTS, YOUR HONOR.

1 WITH RESPECT TO, I HAVEN'T SEEN
2 PLAINTIFFS CITE ANY CASE LAW THAT THERE IS A
3 BRIGHT LINE RULE AS TO WHETHER DOCUMENTS LOSE
4 THEIR CONFIDENTIALITY. AND I AM NOT AWARE OF ANY
5 SUCH LAW.

6 I WOULD ALSO NOTE, AS WE NOTED IN THE
7 BRIEF, THE ASSEMBLY OF -- APOLOGIES. THE
8 ASSEMBLY OF PLANS AND LONG TERM BUSINESS
9 STRATEGY, CONSIDER HOW THE BLUES COULD BETTER
10 COMPETE IN THE NATIONAL MARKET PLACE. THEY
11 CONSIDERED HOW TO BETTER PROTECT THE SERVICE
12 MARKS. THOSE SERVICE MARKS ARE STILL IN USE
13 TODAY. THEY CONSIDERED HOW THE BLUES COULD
14 BETTER STRUCTURE THEIR LICENSE AGREEMENTS AND
15 THEIR MEMBERSHIP STANDARDS. THOSE AGREEMENTS AND
16 MEMBERSHIP STANDARDS THAT CAME OUT OF THE
17 ASSEMBLY OF PLANS, CAME OUT IN 1991, WE STILL USE
18 THOSE LICENSING AGREEMENTS AND MEMBERSHIP
19 STANDARDS. TO SAY THAT DISCUSSIONS ABOUT THOSE
20 IS STALE NOW IS INCORRECT. I THINK THEY ARE
21 STILL RELEVANT TO HOW WE OPERATE COMMERCIALY
22 TODAY. I DON'T THINK SIMPLY BECAUSE THEY ARE
23 OLDER MEANS THEY HAVE LOST THEIR CONFIDENTIALITY
24 AT THIS POINT.

25 AGAIN, WITH RESPECT TO PLAINTIFFS'

1 STATEMENT THAT SOMEHOW THE CUNNINGHAMS' USE OF
2 THESE DOCUMENTS PUT IN THE PUBLIC DOMAIN, IT'S
3 CLEAR THAT THE ASSOCIATION TOOK REASONABLE STEPS
4 TO MAINTAIN THE CONFIDENTIALITY OF THOSE
5 DOCUMENTS. WE ASKED THE CUNNINGHAMS TO ENTER
6 INTO A CONFIDENTIALITY AGREEMENT. THAT
7 CONFIDENTIALITY AGREEMENT DIDN'T HAVE ANY
8 EXPIRATION DATE -- THE CONFIDENTIALITY PROVISION
9 DID NOT HAVE AN EXPIRATION DATE. SO WHILE
10 MR. CUNNINGHAM WAS REQUIRED TO FINISH THE BOOK BY
11 1991, THERE IS NOTHING THAT LIMITED, THAT ALLOWED
12 HIM TO DISCLOSE THE DOCUMENTS AFTER THAT EXPIRED.

13 SO, THAT ARGUMENT AGAIN, THE
14 CONFIDENTIALITY STILL CONSTRAINS THEM. THE
15 DOCUMENTS HAVE NOT BEEN -- THERE IS NO EVIDENCE
16 THE DOCUMENTS HAVE BEEN PUT OUT INTO THE PUBLIC
17 DOMAIN BY THE CUNNINGHAMS EXCEPT FOR THE FEW
18 BRIEF CITATIONS THAT MAY APPEAR IN THE BOOK. AND
19 AS YOUR HONOR HAD RECOGNIZED AND AS WE HAVE
20 DISCUSSED AT THE PRIOR TWO HEARINGS, THE
21 CUNNINGHAMS, WE DON'T KNOW WHAT THEY SAW. WE
22 DON'T KNOW THAT THEY SAW ANY OR ALL THESE
23 DOCUMENTS. WE KNOW THEY PROBABLY SAW THE FEW
24 THAT ARE CITED IN THE BOOK BUT BEYOND THAT, WE
25 DON'T KNOW WHAT OF THE 6,000 PAGES THAT

1 CUNNINGHAMS SAW. SO AGAIN, THAT'S ANOTHER REASON
2 WHY THERE HAS BEEN NO WAIVER HERE.

3 THE ASSOCIATION, AGAIN, ACTED IN GOOD
4 FAITH IN DESIGNATING THESE. THE PROTECTIVE
5 ORDER, CONTRARY TO MR. RAGSDALE'S ARGUMENT, DOES
6 NOT LIMIT WHAT CAN BE DESIGNATED AS CONFIDENTIAL
7 OR SIMPLY TRADE SECRET. IT ALSO ALLOWS THE
8 ASSOCIATION OR ANY PARTY TO DESIGNATE WHAT IS
9 CALLED CONFIDENTIAL COMMERCIAL INFORMATION. AND
10 THERE IS CASE LAW THAT EXTENDS CONFIDENTIAL
11 COMMERCIAL INFORMATION TO MARKET RESEARCH
12 STUDIES, TO MARKETING STRATEGIES, TO THINGS THAT
13 ARE JUST BEYOND WHAT MIGHT BE OTHER STRATEGIC
14 INITIATIVES ABOUT HOW THEY MIGHT OPERATE. SO
15 IT'S --

16 THE COURT: I HAVE NO QUESTION THAT
17 BUSINESS STRATEGIES OF BUSINESSES ARE THE TYPE OF
18 THING THAT A BUSINESS CAN SEEK TO PROTECT IN A
19 PROTECTIVE ORDER. AND I GUESS THE QUESTION I AM
20 TRYING TO FIGURE OUT IS MUCH MORE PRACTICAL THAN
21 THAT. WHEN WE HAVE A DISPUTE AS TO WHETHER A
22 MASS OF DOCUMENTS -- NOW, IF WE ARE TALKING ABOUT
23 A FEW DOCUMENTS, GRANTED, I CAN REVIEW THOSE.
24 BUT WE ARE TALKING ABOUT A MASS OF DOCUMENTS.
25 AND, BELIEVE ME, I AM NOT SEEKING AN INVITATION

1 TO REVIEW 6,000 DOCUMENTS. BUT WHEN THERE IS A
2 MASS OF DOCUMENTS, WHO SHOULD HAVE TO JUSTIFY
3 THAT THE DOCUMENTS EITHER ARE OR ARE NOT
4 CONFIDENTIAL FOR DISCOVERY PURPOSES?

5 MS. DONNELL: WELL, UNDER THE
6 PROTECTIVE ORDER, THE PARTY CHALLENGING THE
7 CONFIDENTIALITY DESIGNATION HAS THE BURDEN TO
8 COME FORWARD IDENTIFYING SPECIFIC DOCUMENTS BY
9 BATES NUMBER THAT THEY ARE CHALLENGING. AND WE
10 BELIEVE THAT WASN'T FILED HERE. WE AGREE THAT
11 UNDER THE PROTECTIVE ORDER AND GENERALLY IN THE
12 CASE LOG, ONCE THEY HAVE MADE THAT IDENTIFICATION
13 OF A SPECIFIC DOCUMENT, WE BEAR THE BURDEN OF
14 ESTABLISHING CONFIDENTIALITY, PROVING THE
15 CONFIDENTIALITY DOCUMENT. IT'S VERY DIFFICULT
16 HERE TO DO THAT WHEN THEY HAVEN'T CHALLENGED A
17 SPECIFIC DOCUMENT.

18 THE COURT: HOW DO I PROTECT AGAINST
19 WHAT MR. RAGSDALE SAYS IS THE TREND HERE --
20 AND YOU TELL ME IT'S NOT, AND I UNDERSTAND THAT.
21 THE TREND HERE IS THAT THE EASIEST THING TO DO IS
22 JUST DESIGNATE EVERYTHING CONFIDENTIAL AND PUT
23 THE BURDEN ON THEM TO COME FORWARD AND IDENTIFY
24 THOSE DOCUMENTS THAT THEY THINK SHOULD NOT BE
25 DESIGNATED.

1 MS. DONNELL: AGAIN, AS I SAID, WE
2 HAVEN'T BEEN DOING BLANKET DESIGNATION SO I THINK
3 CASE LAW THAT SUGGESTS WHERE A PARTY DESIGNATES
4 150,000 DOCUMENTS AS CONFIDENTIAL, THE BURDEN
5 DOESN'T SHIFT TO THE PARTY TO CHALLENGE IT.
6 THAT'S NOT THE SITUATION WE HAVE HERE. 6,000
7 PAGES -- WHICH PROBABLY AMOUNTS TO A COUPLE
8 HUNDRED DOCUMENTS.

9 I THINK IT'S TELLING THAT PLAINTIFF
10 INCLUDED EXAMPLES IN THEIR MOTION FROM A
11 SUBSEQUENT PRODUCTION. NOW, THEY WERE ABLE TO GO
12 IN AND SAY, HEY, I DON'T THINK THIS SHOULD HAVE
13 BEEN, WHY WAS THIS DONE? IT'S TELLING TO ME THEY
14 DIDN'T DO THAT WITH THE ASSEMBLY OF PLANS AND
15 LONG TERM BUSINESS STRATEGY DOCUMENTS. THEY
16 DIDN'T COME FORWARD WITH ANY OF THOSE WHEN THEY
17 DID SO WITH RESPECT TO ANOTHER PRODUCTION.

18 SO I THINK HERE, PARTICULARLY WHERE WE
19 HAVEN'T DESIGNATED EVERY DOCUMENT AS
20 CONFIDENTIAL, WE HAVE CERTAINLY PRODUCED
21 DOCUMENTS WITHOUT CONFIDENTIALITY DESIGNATIONS.
22 THE BURDEN IS STILL ON THEM TO COME FORWARD TO
23 IDENTIFY SPECIFIC DOCUMENTS. AND THAT MAKES IT,
24 FACILITATES OUR ABILITY TO SAY, YOU KNOW WHAT, WE
25 AGREE WITH YOU. THEY ARE TRADEMARK DOCUMENTS,

1 THAT WAS AN ERRONEOUS DESIGNATION. LETS DON'T
2 BOTHER THE COURT, WE'LL DE-DESIGNATE. THAT'S HOW
3 THE PROCEDURE SHOULD GO. IF THEY HAD COME TO US
4 AND SAID HERE'S SPECIFIC DOCUMENTS, WE DON'T
5 THINK THEY SHOULD BE CONFIDENTIAL, WE WOULD BE
6 HAPPY TO CONSIDER THAT. AND WE HAVE OFFERED TO
7 DO THAT.

8 I THINK PARTICULARLY HERE WHERE THERE
9 IS NO CASE PREPARATION BEING HAMPERED, THEY CAN
10 USE THE DOCUMENTS WITH THE PARTIES, THEY CAN USE
11 THEM WITH ANY OF THEIR COUNSEL, THEY CAN USE IT
12 WITH THEIR EXPERTS. IT'S NOT AS ATTORNEYS' EYES
13 ONLY CASES THAT THEY HAVE CITED WHERE A CLIENT
14 COULDN'T REVIEW A DOCUMENT SO THE CLIENT COULDN'T
15 ASSIST IN PREPARING FOR MEDIATION AND SUMMARY
16 JUDGMENT MOTION. THAT'S NOT WHAT WE HAVE HERE.
17 WE SIMPLY HAVE DOCUMENTS THAT ARE MARKED
18 CONFIDENTIAL. AND MR. RAGSDALE STATED WE
19 COULDN'T USE THEM IN A HEARING BEFORE JUDGE
20 PROCTOR. THAT'S EXACTLY THE SITUATION WHERE WE
21 SAID IF YOU'RE GOING TO USE IT, WANT TO USE A
22 DOCUMENT IN OPEN COURT, YOU'RE GOING TO WANT TO
23 USE IT WITH THE DISPOSITIVE MOTION, BRING IT TO
24 US. WE ARE HAPPY TO DO THAT. BUT HERE, WHERE WE
25 HAVE THOUSANDS UPON THOUSANDS OF PAGES THAT ARE

1 BEING PRODUCED, AGAIN, NOT ALL CONFIDENTIALITY
2 DESIGNATIONS TO GO THROUGH THE BURDEN WHILE WE
3 ARE TRYING TO PRODUCE DOCUMENTS QUICKLY OF
4 REDESIGNATING, FOR EXAMPLE, WHEN MOST OF THOSE
5 DOCUMENTS ARE NOT GOING TO BE GERMANE TO ANY
6 DISPOSITIVE MOTION OR TRIAL SEEMS CONTRARY TO THE
7 SPIRIT OF THE COURT'S STREAMLINING ORDER AND THE
8 WORK THAT WE NEED TO GET DONE IN THE NEXT 13
9 MONTHS.

10 THE COURT: OF THE 88,000 PAGES
11 APPROXIMATELY THAT HAVE BEEN PRODUCED, WHAT'S
12 YOUR BEST GUESS WHAT PERCENTAGE OF THEM HAVE BEEN
13 DESIGNATED CONFIDENTIAL?

14 MS. DONNELL: I THINK 80-SOMETHING
15 PERCENT HAVE BEEN DESIGNATED AS CONFIDENTIAL.
16 AND AGAIN, THERE IS SOME THAT HAVE BEEN
17 DESIGNATED AS ATTORNEYS' EYES ONLY. A VERY, VERY
18 SMALL PERCENTAGE SIMPLY BECAUSE OF ACTUALLY
19 INNER PLAN, PLANS INDEPENDENT COMPANIES CAN'T
20 NECESSARILY USE EACH OTHER'S DATA.

21 THEN THERE IS A SIGNIFICANT PERCENTAGE
22 THAT HAVING BEEN PRODUCED WITHOUT ANY
23 CONFIDENTIALITY DESIGNATION. AND PLAINTIFFS HAVE
24 POINTED OUT IN THEIR MOTION, PERHAPS THIS
25 TRADEMARK DOCUMENT SHOULD HAVE BEEN PRODUCED AS

1 CONFIDENTIAL. AND TO THE EXTENT THEY COME
2 FORWARD AND WE AGREE WITH ITEMS LIKE THAT, WE ARE
3 HAPPY TO CONSIDER IT AND REPRODUCE WITHOUT A
4 DESIGNATED. BUT WE NEEDS THAT COOPERATION AS
5 OUTLINED IN THAT PROTECTIVE ORDER. IT MAKES
6 SENSE.

7 THE COURT: I GUESS, I AM TRYING TO BE
8 FAIR, MY CONCERN HERE IS I DON'T WANT TO
9 ENCOURAGE THE ABUSE OF A CONFIDENTIAL
10 DESIGNATION. AND I TRY TO MAKE THAT CLEAR TO
11 EVERYBODY THAT IF YOU THINK THAT YOU CAN SIMPLY
12 DESIGNATE EVERYTHING CONFIDENTIAL AND THEN SAY,
13 OKAY, PLAINTIFFS, NOW YOU GO THROUGH THE 88 PAGES
14 AND PICK OUT WHAT YOU THINK SHOULD NOT BE
15 CHANGED, EVENTUALLY, MAYBE NOT NOW, BUT
16 EVENTUALLY THAT'S GOING TO BE VIEWED AS BEING AN
17 ABUSE. AND IT MAY RESULT IN A CHANGE IN THE
18 PROTECTIVE ORDER.

19 MS. DONNELL: UNDERSTOOD, YOUR HONOR.
20 AND WE HAVE CERTAINLY INSTRUCTED OUR REVIEWERS TO
21 TAKE CAREFUL LOOKS AT CONFIDENTIALITY AS YOU
22 MENTIONED, SO WE DON'T GET TO THAT POINT.

23 I WILL SAY THAT THE NOTION THAT
24 CONFIDENTIALITY SHOULD BE THE EXCEPTION RATHER
25 THAN THE NORM IS HARD. THERE IS LOT OF COMMITTEE

1 MEETINGS THAT ARE GOING TO BE PRODUCED. WE'RE
2 GOING TO BE PRODUCING BOARD MINUTES. THOSE ARE
3 CLEARLY CONFIDENTIAL DOCUMENTS. THERE IS GOING
4 TO BE -- WE ARE PRODUCING DOCUMENTS FROM BACK TO
5 2005, THEY ARE VERY RECENT DOCUMENTS DISCUSSING
6 CURRENT INITIATIVES, HOW WE STRUCTURED BLUE
7 CARDS, HOW OUR NATIONAL PROGRAMS WORK. SO THE
8 NOTION THAT IT'S THE EXCEPTION I DON'T THINK IS
9 CORRECT JUST BY THE NATURE OF THE DOCUMENTS THAT
10 WE ARE GOING TO BE PRODUCING.

11 AND AGAIN, CERTAINLY THIS IS VERY
12 DIFFERENT THAN THE CASES THEY CITE WHERE IT'S
13 ATTORNEYS' EYES ONLY AND IT'S 95 PERCENT
14 ATTORNEYS' EYES ONLY. THAT'S NOT WHERE WE ARE
15 AND INTEND TO BE.

16 THE COURT: I UNDERSTAND THAT. AND I
17 AM JUST TRYING TO THINK -- AND I DON'T WANT TO
18 KEEP BEATING A DEAD HORSE -- BUT I WANT TO BE
19 CLEAR TO THE PARTIES THAT IT WILL BE ABUSE OF THE
20 PROTECTIVE ORDER TO SIMPLY DESIGNATE A LARGE BODY
21 OF DOCUMENTS WHERE IF AT SOME POINT I AM FORCED
22 TO GO BACK AND REVIEW THEM AND IT TURNS OUT THERE
23 IS NOT SOME PRACTICAL NEED FOR CONFIDENTIALITY OF
24 THESE DOCUMENTS, IT'S GOING TO BE REGARDED AS AN
25 ABUSE. SO I THINK YOU BETTER VERY CAREFULLY LOOK

1 AT WHAT GETS DESIGNATED AS CONFIDENTIAL IF YOU
2 WANT TO TRY TO KEEP THE PROTECTIVE ORDER IN
3 PLACE.

4 MS. DONNELL: UNDERSTOOD, YOUR HONOR.
5 WE ARE CERTAINLY -- YEAH.

6 THE COURT: THE OLDER A DOCUMENT IS,
7 THE LESS LIKELY, IT SEEMS TO ME, I GUESS THEY ARE
8 STILL SOME THINGS THAT ARE TOP SECRET FROM WORLD
9 WAR II, I GUESS. BUT THE OLDER A DOCUMENT IS
10 SEEMS TO ME THE LESS LIKELY, THE LESS THERE IS A
11 NEED FOR IT TO BE CONFIDENTIAL. THE PASSAGE OF
12 TIME, AS YOU SAY, MAKES SOMETHING STALE AFTER A
13 WHILE. MAYBE THAT'S NOT THE CASE HERE. BUT
14 THAT'S ONE OF THOSE PRACTICAL CONSIDERATIONS TO
15 LOOK AT IF WE ARE TALKING ABOUT A 30 YEAR OLD
16 DOCUMENT, DOES IT REALLY IMPLICATE THE INTEREST
17 OF THE PARTIES TODAY?

18 MS. DONNELL: WE'LL PASS THAT ALONG,
19 YOUR HONOR, CERTAINLY KEEP THAT IN MIND AS WE ARE
20 REVIEWING DOCUMENTS MOVING FORWARD.

21 I THINK, AGAIN, AS I SAID, WE DO THINK
22 THAT THEIR CASE HAS NOT BEEN HAMPERED AND WE ARE
23 CERTAINLY FOCUSED ON CONTINUING THIS FORM OF
24 PRODUCTION RATHER THAN RE-REVIEW PAST
25 PRODUCTIONS. BUT AGAIN, AS WE ARE MOVING FORWARD

1 WITH OUR PRODUCTIONS, WE ARE GOING TO CONTINUE TO
2 RULE OUT HOPEFULLY EACH MONTH MOVING FORWARD, WE
3 WILL ABSOLUTELY KEEP IN MIND YOUR HONOR'S
4 INSTRUCTIONS.

5 THE COURT: ALL RIGHT.

6 MS. DONNELL: THANK YOU.

7 THE COURT: MR. RAGSDALE.

8 MR. RAGSDALE: YOUR HONOR THE
9 DEFINITION OF CONFIDENTIAL INFORMATION HAS A
10 SECOND PART, AND THAT IS THEY HAVE TO BE ABLE TO
11 DEMONSTRATE THAT THEY HAVE MAINTAINED THOSE
12 DOCUMENTS AS CONFIDENTIAL OR MADE EFFORTS TO DO
13 THAT. AND THAT SIMPLY IS NOT TRUE ABOUT THE
14 DOCUMENTS THAT WERE PROVIDED HERE, THE HISTORICAL
15 ARCHIVES, ET, CETERA WITH THE CUNNINGHAMS. IT
16 WAS SEPTEMBER OF 2015 WHEN WE WERE FIRST INFORMED
17 THAT BLUE CROSS HAD DISCOVERED THAT THE
18 CUNNINGHAMS HAD TAKEN A BUNCH OF DOCUMENTS WITH
19 THEM HOME. THESE WERE NOT DOCUMENTS THAT WERE
20 MAINTAINED UNDER STRICT SECRECY IF THE
21 CUNNINGHAMS COULD TAKE BOXES OF THEM WITH THEM
22 THAT STAYED WITH THEM FOR 30 YEARS BEFORE BLUE
23 CROSS EVEN DISCOVERED THAT THEY HAD GONE WITH
24 THOSE OFFERS.

25 I WOULD ALSO MAKE THIS COMMENT, JUDGE,

1 AND I THINK IT IS IMPORTANT TO NOTE THAT THE
2 NOTION THAT WE WERE REQUIRED TO GIVE THEM
3 SPECIFIC BATES STAMPS NUMBERS OF DOCUMENTS, WE
4 DID GIVE THEM THE RANGE OF THE 6,000 DOCUMENTS
5 WHICH, DEPENDING ON THEIR ARGUMENT, IS EITHER A
6 LOT OR NOT VERY MANY AT ALL. BUT 6,000 DOCUMENTS
7 MAY NOT BE A BLANKET DESIGNATION BUT IT'S AT
8 LEAST LIKE AN AFGHAN OR COVERLET. IT'S A LOT OF
9 DOCUMENTS TO BE THROWN INTO THAT CATEGORY WITHOUT
10 SPECIFIC JUSTIFICATION. THAT'S WHY WE ASKED THEM
11 TO RECONSIDER THE DESIGNATION OF THOSE 6,000
12 DOCUMENTS BY BATES NUMBERS. NOTHING WOULD BE
13 SERVED FOR US TO HAVE GONE THROUGH EACH DOCUMENT
14 AND SAID THE SAME THING 6,000 TIMES TO SAY THAT
15 THOSE NEEDED TO BE RECONSIDERED AND THAT WAS THE
16 PURPOSE BEHIND WHY WE DID THAT.

17 ANOTHER POINT I THINK IS IMPORTANT TO
18 BE NOTED, THE NOTION THAT THE PLAINTIFFS INVOLVED
19 IN THIS HAVE A WEB SITE, THAT IS CERTAINLY TRUE.
20 THE NOTION THAT WE ARE TRYING TO INFLUENCE
21 POTENTIAL JURORS IS NOT TRUE. BUT I WOULD SAY
22 THIS. BLUE CROSS HAS A TINY LITTLE PUBLIC
23 RELATIONS EFFORT AS WELL GOING ON. I BELIEVE
24 THEY HAVE THEIR OWN WEB SITE AS WELL AS DAILY
25 ADVERTISING THAT GOES ON TO THOSE POTENTIAL

1 JURORS. WE WOULDN'T SUGGEST THAT THIS COURT
2 RESTRICT THAT.

3 THE COURT: I AM SHOCKED THERE IS AN
4 ALEXANDER SHUNNARAH WEB SITE OUT THERE SOMEWHERE.

5 MR. RAGSDALE: I AM SHOCKED, TOO. I
6 AM SHOCKED THERE IS AN ALEXANDER SHUNNARAH. IT'S
7 PROBABLY A DISCUSSION FOR ANOTHER TIME.

8 BUT I WOULD SAY TO MAYBE DEMONSTRATE
9 HOW THEY HAVE GONE TOO FAR WITH THE DESIGNATION,
10 EVEN THE DOCUMENT THEY SUBMITTED, THAT THEY SAID
11 THEY WANTED THE COURT TO LOOK AT ITS ENTIRETY
12 THAT WAS SUBMITTED TO THIS COURT WITH MR. ZOCK'S
13 DECLARATION YESTERDAY. IT CONTAINS REFERENCES TO
14 BLUE CROSS'S SUPPORT FOR THE OLYMPICS. IT
15 CONTAINS REFERENCES TO EMPLOYEE INCENTIVE AWARDS
16 THAT WERE MADE FOR EMPLOYEES OF THE MONTH. THOSE
17 KIND OF THINGS SHOULD NOT BE DESIGNATED AND THERE
18 IS NO REASON FOR THEM TO BE CONFIDENTIAL.

19 I DON'T THINK BLUE CROSS WAS AFRAID
20 THEIR SUPPORT OF THE OLYMPICS WOULD SOMEHOW BE
21 KNOWN TO THEIR COMPETITORS IN A WAY THAT WOULD
22 HARM THEM COMMERCIALY.

23 SO, OUR POINT IS THOSE DESIGNATIONS
24 HAVE BEEN OVERREACHING. AND THE NOTION THAT IT
25 IS OUR RESPONSIBILITY TO GO THROUGH THOUSANDS OF

1 PAGES OF DOCUMENTS RATHER THAN THE DEFENDANT'S
2 RESPONSIBILITY TO SHOW, IN FACT, THAT THEY MEET
3 THE DEFINITION OF A CONFIDENTIAL,
4 PROPERLY-DESIGNATED CONFIDENTIAL DOCUMENT.
5 THAT'S WHY WE ARE HERE TODAY.

6 THE LAST THING THAT I WOULD SAY IS
7 THIS. THE 11TH CIRCUIT HAS SAID THAT THE PURPOSE
8 OF DISCOVERY IS TO HELP WITH PREPARATION FOR
9 TRIAL. THAT'S ITS PURPOSE. AND WE BELIEVE THAT
10 THE OVERUSE BY THE DEFENDANT, PARTICULARLY THE
11 ASSOCIATION IN THIS CASE, BUT I DON'T THINK THIS
12 IS THE LAST TIME, FRANKLY, THAT WE WILL BE IN
13 FRONT OF YOU ON THIS VERY ISSUE. MAYBE YOUR
14 ADMONITION WILL HELP CUT DOWN ON THAT. I HOPE
15 SO. BUT THAT IS THAT THE OVERUSE OF THE
16 DESIGNATION FOR CONFIDENTIALITY AND OTHER
17 DESIGNATION HAMPERS OUR ABILITY TO PREPARE THIS
18 CASE FOR TRIAL. AND IT IS NOT A QUESTION OF
19 WHETHER OR NOT THIS COMPETES WITH THE
20 STREAMLINING. I THINK THAT'S A FALSE CHOICE. IT
21 IS NOT THE ONLY THING. EVERY ONE OF THESE
22 DEFENSE LAWYERS, I BELIEVE, CAN WALK AND CHEW GUM
23 AT THE SAME TIME SO THAT I DON'T THINK THIS
24 INTERFERES IN ANY WAY OR DIMINISHES THE
25 IMPORTANCE OF THE FACT THAT THESE DOCUMENTS,

1 PARTICULARLY HISTORICAL DOCUMENTS, PARTICULARLY
2 DOCUMENTS THEY SELECTIVELY PROVIDED TO THEIR
3 SELECTIVELY-CHOSEN HISTORIAN TO WRITE A VERY
4 CLEVERLY ATTENUATED HISTORY OF BLUE CROSS SHOULD
5 NOT BE THE ONLY STORY THAT'S OUT THERE.

6 TO THE EXTENT THAT THE INFORMATION HAS
7 BEEN MADE PUBLIC WHICH THEY CHOSE TO MAKE IT
8 PUBLIC, IT SHOULD NOT BE ONLY THEIR SIDE OF THE
9 STORY THAT IS PROVIDED TO THOSE PEOPLE THAT WE
10 FEEL IT'S NECESSARY TO PROVIDE IT TO.

11 SO, WE APPRECIATE THE COURT'S
12 INDULGENCE ON THIS ISSUE. WE DON'T, AS I SAID,
13 THESE DOCUMENTS ARE IMPORTANT BUT, FRANKLY, IT IS
14 THE FUTURE USE BY THESE DEFENDANTS THAT WE ARE
15 MORE CONCERNED ABOUT.

16 THE COURT: OTHER RESPONSE?

17 MS. DONNELL: NOTHING, YOUR HONOR,
18 UNLESS YOUR HONOR HAS ANY FURTHER QUESTIONS.

19 THE COURT: ANY OTHER PARTY WISH TO --
20 I KNOW THIS FOCUSES ON THE ASSOCIATION'S
21 DOCUMENTS. BUT ANYBODY ELSE HAVE ANY THOUGHTS
22 ABOUT DESIGNATION OF CONFIDENTIALITY?

23 ALL RIGHT. THAT'S ALL THE ITEMS THAT I
24 HAVE ON MY AGENDA.

25 MR. RAGSDALE, DO YOU HAVE ANY OTHER

1 ITEMS THAT NEED TO BE TAKEN UP?

2 MR. RAGSDALE: NO, YOUR HONOR.

3 THE COURT: MS. WEST, ANYTHING ELSE?

4 MS. WEST: NO, SIR.

5 THE COURT: I HAVE GOT A COUPLE OF
6 MOTIONS UNDER SUBMISSION THEN AND I WILL TRY TO
7 GET YOU SOMETHING OUT ON THOSE HOPEFULLY RIGHT
8 AFTER THANKSGIVING, THE WEEK AFTER THANKSGIVING
9 SOMETIME, AND TRY TO GET THOSE. I AM ASSUMING
10 THAT WE ARE STILL FINE FOR, BASED ON THE
11 DISCUSSIONS, FOR DECEMBER 15TH. I HAVE IT
12 SCHEDULED AT 2:00.

13 IS THE 2:00 TIME FRAME, IS THAT
14 ACCEPTABLE TO EVERYBODY? ANYBODY WANT TO CHANGE
15 IT? GOING ONCE, GOING TWICE.

16 MR. RAGSDALE: WORKS FOR US.

17 MS. WEST: IT SEEMS TO BE FINE FOR US,
18 YOUR HONOR. THANK YOU.

19 THE COURT: VERY GOOD. ALL RIGHT THEN.
20 WE WILL BE ADJOURNED THEN. I WILL SEE YOU ON
21 DECEMBER 15TH AT 2:00.

22 THANK YOU.

23 (COURT IN RECESS.)

24

25

C E R T I F I C A T E

IN RE: MDL 2406

CASE #: 2:13-CV-20000-RDP

I HEREBY CERTIFY THAT THE FOREGOING
TRANSCRIPT IN THE ABOVE-STYLED CAUSE IS TRUE AND
ACCURATE.



DECEMBER 7, 2015

LINDY M. FULLER, RMR, CRR, CBC DATE
FEDERAL OFFICIAL COURT REPORTER
HUGO L. BLACK U.S. COURTHOUSE
1729 5TH AVENUE NORTH, SUITE 207
BIRMINGHAM, ALABAMA 35203